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Supreme Court, U.S.
FILED

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BIG RIVER MINERALS CORPORATION, et al.,
Petitioners,

v.

MICHAEL H. HOLLAND, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Coal Industry Retiree Health Benefit Act of 1992 can be construed in a manner that renders language redundant or superfluous, particularly where the language triggers the statute's applicability. Can individuals who retired with disability retirement pensions, that did not file pension applications on or before September 30, 1994, be eligible beneficiaries under Section 9711(b) and Section 9712(b) of the Coal Act.

Whether imposing retroactive liability under the Coal Act on related persons such as Pea Ridge Iron Ore Company ("Pea Ridge") and Oxide Services Corporation ("Oxide Services") is unconstitutional based on the standard set forth in Eastern Enterprises v. Apfel, 188 S. Ct. 2131 (1998).

PARTIES TO THE PROCEEDINGS

Petitioners, Big River Minerals Corp., Big River Coal Corp., Pea Ridge Iron Ore Company, Inc., Oxide Services Corp., Castle Rock Mining, Castle Rock Coal Corp., Long Branch Energy Corp., Pinnacle Rock Coal Corp., Panther Branch Coal Company d/b/a Long Branch Energy, Birchfield Mining, Inc., Davidson Mining, Inc. and M.A.E. - West, Inc., were defendants in the district court and appellants in the circuit court, respectively.

Respondents, Michael H. Holland, Marty D. Hudson, Elliot A. Segal, A. Frank Dunham, as Trustees of the United Mine Workers of America 1992 Benefit Plan, were plaintiffs in the district court and appellees in the circuit court. Additionally, Michael H. Holland, Michael O. McKown, Donald E. Pierce, Jr., Elliot A. Segal, as Trustees of the United Mine Workers of America 1993 Benefit Plan were third party defendants in the district court and appellees in the circuit court.

None of the Petitioners is publicly owned and none have a publicly owned parent or a non-wholly owned subsidiary.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals of the Fourth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a)[1] is reported at 181 F.3d 597 (4th Cir. 1999). The opinion of the district court on the judgment which is the subject matter of this petition is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 23, 1999. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PERTINENT PROVISIONS

The Fifth Amendment to the Constitution and pertinent provisions of the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. § 9701-9722.

STATEMENT OF THE CASE

This was a case of first impression for the United States Court of Appeals for the Fourth Circuit. The question in the case was whether certain individuals who retired with disability retirement pensions (and their dependents) were

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[1] All citations to "App." herein are to the Appendix to this petition.

eligible for health benefits under the Coal Act. The dispute is not over whether these individuals are eligible for health benefits. They are. Instead, the dispute is whether their eligibility arises under the Coal Act, in which case the signatory companies (Birchfield Mining, Inc., Davidson Mining, Inc. and M.A.E. - West, Inc.) must pay for them, or under the 1993 Benefit Plan, in which case the signatory companies would not pay for them because they have no obligation to contribute to that plan.

The 1992 Benefit Plan was created by the Coal Act, which "closed out" two prior benefit plans maintained by the Bituminous Coal Operators' Association, Inc. ("BCOA") and the United Mine Workers of America ("UMWA"). The Coal Act was designed to remedy defects and pass benefit coverage; it did not address supervision of benefits to those who retire after September 30, 1994, or who meet age and service requirements after February 1, 1993. The group of coal industry employees covered by the 1992 Benefit Plan is finite and limited.

None of the individuals in question here was eligible for an age and service pension from the 1974 pension plan as of February 1, 1993, and none was receiving benefits under an employer's independent employer plan by February 1, 1993. Moreover, none of the individuals in question filed a pension application until after September 30, 1994. The district court focused on the retroactive date determined by the Social Security Administration ("SSA") to find eligibility for health benefits under the Coal Act.

This petition seeks to close out the Coal Act, not expand it as sought by the 1992 Benefit Plan.

The Coal Act finds related persons responsible for the liabilities of the signatory companies if the signatory companies are not able to satisfy the obligation. In this case, Pea Ridge and Oxide Services offer circumstances materially different from the signatory companies but much like the entities in Eastern Enterprises.

REASONS FOR GRANTING THE WRIT

The Fourth Circuit decision conflicts with the Fourth Circuit and Supreme Court decisions holding that a statute cannot be construed in a manner that renders language redundant or superfluous. The decision conflicts with controlling Supreme Court and Fourth Circuit decisions including United States v. Alaska, 521 U.S. 1, 59 (1997), Gustafson v. Alloyd Co., 513 U.S. 561, 574 (1995), Freytag v. Commissioner of Internal Revenue, 501 U.S. 868, 877 (1991), Alexander S. v. Harpootlian, 113 F.3d 1373, 1383 (4th Cir. 1997), cert. denied 118 S. Ct. 880, ___ U.S. ___ (1998), Maryland Psychiatric Society, Inc. v. Wasserman, 102 F.3d 717, 720 (4th Cir. 1996), cert. denied, 118 S. Ct. 51, ___ U.S. ___ (1997), United States v. Fisher, 58 F.3d 96, 99 (4th Cir. 1995), United States v. Morison, 844 F.2d 1057, 1064 (4th Cir. 1988), and State Water Control Board v. Train, 559 F.2d 921, 924 & n. 20 (4th Cir. 1976).

The Fourth Circuit initially found that Sections 9711(b)(1) and 9712(b)(2) of the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9711(b)(1) and 9712(b)(2) (App. 26a-28a), were ambiguous because they were reasonably susceptible to either party's interpretation. Citing to the Coal Act's background, the Fourth Circuit went on to adopt the Trustees' interpretation of those provisions. Holland v. Big River Minerals Corporation, 181 F.3d 597,

603 (4th Cir. 1999) (App. 12a). But the decision conflicts with the foregoing Supreme Court and Fourth Circuit decisions because it renders the "age and service" and "based upon" language in Sections 9711(b)(1) and 9712 (b)(2) redundant and superfluous.

ARGUMENT

A. A statute cannot be construed in a manner that makes certain language redundant or superfluous.

"Rules of statutory construction forbid us to construe one provision [of a statute] in a way that renders another provision of the same enactment superfluous." Maryland Psychiatric Society, 102 F.3d at 720, citing Freytag, 501 U.S. at 877. Therefore, "[w]hen interpreting a statute, rules of statutory construction require that we give meaning to all statutory provisions and seek an interpretation that permits us to read them with consistency," Fisher, 58 F.3d at 99.

These principles apply even if the statute is ambiguous: "[h]aving determined that the phrase at issue is ambiguous, we apply the traditional tools of statutory construction. [Citation omitted.] In doing so, '[w]e begin with the premise that all parts of the statute must be read together, neither taking specific words out of context, nor interpreting one part so as to render another meaningless.'" Alexander S., 113 F.3d at 1383.

In short, "[t]he Court will avoid an interpretation of a statute that 'renders some words altogether redundant.'" United States v. Alaska, 521 U.S. at 59, citing Gustafson, 513 U.S. at 574.

B. The Fourth Circuit overlooked these controlling principles of statutory construction.

This case initially turns on what the "age and service" and "based upon" language in Sections 9711(b)(1) and 9712(b)(2) mean for certain post-enactment disability pensioners who are seeking health benefits under the Coal Act.[2] Section 9711(b)(1) (App. 25a) provides as follows:

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[2] There is no dispute that disability pensioners who were already receiving health benefits from their employer or the UMWA 1950 or 1974 Benefit Plans as of February 1, 1993, are eligible for health benefits under Sections 9711(a) or 9712(b)(2). The dispute in this case is whether certain individuals who were not receiving benefits as of February 1, 1993, and who became disability pensioners after February 1, 1993, are eligible for health benefits under Sections 9711(b)(1) and 9712(b)(2). Big River submits that such post-enactment disability pensioners are not eligible for the statutory benefits and, instead, should be receiving benefits from a collectively bargained plan known as the United Mine Workers of America 1993 Benefit Plan. The United States District Court for the District of Columbia, in Penn Allegh Coal Co. v. Holland, et al., C.A. 97-121 (HHK) (July 22, 1998) supports Big River's position and is inapposite the district court and Fourth Circuit in this case. On appeal, the United States Court of Appeals for the District of Columbia Circuit reversed the district court's decision and concluded, in accordance with the Fourth Circuit, that "to qualify for benefits under Section 9711(b), a disability retiree need only satisfy whatever requirements entitle him to receive a pension by February 1, 1993, provided he has retired from the coal industry on or before September 30, 1994." Penn Allegh Coal Co. v. Holland, et al., 183 F.3d 860, 864 (D.C. Cir. 1999). The D.C. Circuit expressed no opinion regarding the age and service requirements of Section 9712(b). Id. The case was reversed and remanded to the district court for consideration of whether the subject employee retired from the coal industry by September 30, 1994. Id. at 865.

> The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual. (Emphasis added.)

Section 9712(b)(2) (App. 27a-28a) provides as follows:

> For purposes of this section, the term "eligible beneficiary" means an individual who –
>
> (A) but for the enactment of this chapter would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or
>
> (B) with respect to whom coverage is required to be provided under Section 9711, but who does not receive such coverage from the applicable last signatory operator or any

> related person, and any individual who is eligible for benefits by reason of a relationship to an individual described in subparagraph (A) or (B). In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual. (Emphasis added.)

To be an eligible beneficiary under Section 9711(b)(1) or 9712(b)(2), a post-enactment pensioner must, as of February 1, 1993, have "met the age and service requirements for eligibility" to receive health care from his former employer's individual employer plan, or be entitled to health benefits "based upon age and service earned as of February 1, 1993." The question here is whether a post-enactment disability pensioner can meet these criteria.

Big River submits that the "age and service" and "based upon" language necessarily render eligible only post-enactment age and service pensioners whose pensions and corresponding rights to health benefits under the prior collectively bargained plans was based on having attained a certain age and accumulated a certain amount of service. The Trustees, in contrast, claim that "[t]he reference to age and service requirements does not disqualify disabled retirees ... because retirees who were disabled prior to February 1, 1993 met all age and service requirements that applied to them, i.e., none." Big River Minerals Corp., 181 F.3d at 603 (App. 12a).

The decision concluded that "the statutory language is reasonably susceptible to either of these two interpretations." Id. The Fourth Circuit went on to adopt the Trustees' interpretation because, in its view, the Coal Act's historical background indicated that Congress intended to provide coal industry retirees with lifetime benefits, regardless of whether their retirement was due to disability or having satisfied age and service criteria. Big River Minerals Corp., 181 F.3d at 604 (App. 13a).

The Fourth Circuit effectively interprets Sections 9711(b)(1) and 9712(b)(2) as making eligible any pensioner who would have been eligible under the prior collectively bargained plans on any basis (age and service or disability) as of February 1, 1993. This interpretation, however, necessarily deprives the "age and service" and "based upon" language of any substantive meaning or purpose.

First, the Fourth Circuit's interpretation of Sections 9711(b)(1) and 9712(b)(2) may be achieved simply by deleting the "age and service" language:

> The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, but has met the ~~age and service~~ requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual ....

***

For purposes of this Section, the term "eligible beneficiary" means an individual who –

(A) but for the enactment of this chapter would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, ~~based upon age and service earned~~ as of February 1, 1993 ....

Since the Fourth Circuit's interpretation can be achieved by deleting the "age and service" and the "based upon" language, it necessarily follows that their interpretation renders that language redundant and superfluous.

Second, the Fourth Circuit's interpretation cannot sensibly co-exist with the "based upon" language in Section 9712(b)(2). Section 9712(b)(2) states that eligibility shall be "based upon age and service earned as of February 1, 1993." (Emphasis added.) If, as the Fourth Circuit found, this section renders post-enactment disability pensioners eligible beneficiaries, then Congress must have intended to define eligibility "based upon" on criteria (age and service) that do not even apply to and cannot be "earned" by a class it intended to encompass. Obviously, it makes no sense for Congress to have defined eligibility in this manner. Therefore, the "based upon" language must be considered redundant or superfluous to reach the Fourth Circuit's conclusion that Section 9712(b)(2) renders post-enactment disability pensioners eligible beneficiaries.

In short, the conclusion that post-enactment disability pensioners met the "age and service" and "based upon" requirements of Sections 9711(b)(1) and 9712(b)(2) because they met whatever age and service requirements were applicable to their pensions – none – is nothing more than a convoluted way of saying that those Sections should be read as if the "age and service" and "based upon" language was not there, and that all post-enactment pensioners who would have been eligible under the prior collectively bargained plans on any basis (age and service or disability) as of February 1, 1993, are eligible for benefits under the Coal Act. This interpretation of Sections 9711(b)(1) and 9712(b)(2), however, necessarily violates the rule against rendering statutory language redundant or superfluous.

As the Supreme Court observed in Gustafson, "Congress did not write the statute that way, however, and we decline to say it included [those terms] for no purpose." 513 U.S. at 574. Indeed, the rule against rendering statutory language redundant or superfluous has particular significance here, where the Fourth Circuit's interpretation has the "effect of blue penciling out express conditional language in the statute." Natural Resources Defense Council, 822 F.2d 104, 113 (D.C. Cir. 1987).

Put simply, the Fourth Circuit should not have adopted the Trustees' interpretation of Sections 9711(b)(1) and 9712(b)(2) because doing so violated the well-settled rule against rendering statutory language redundant or superfluous.

C. The Coal Act's purposes cannot override the rule against rendering statutory language redundant or superfluous, particularly under the facts of this case.

Given that Big River's interpretation was consistent with the plain meaning of the "age and service" and "based upon" language and did not violate any controlling rules of statutory construction, the Fourth Circuit should not have considered the Coal Act's background or purpose, much less used that analysis to adopt the Trustees' interpretation. " 'If the terms of [a] statute are unambiguous on their face, or in light of ordinary principles of statutory interpretation, then "judicial inquiry is complete," [citation omitted] ... [and] there is no need to consult legislative history...'" United States v. Morison, 844 F.2d at 1063-64 (Emphasis added); see also, Alexander S., 113 F.3d at 1383 ("[W]e begin with the premise that all parts of the statute must be read together [and cannot interpret] one part so as to render another meaningless.")

Even if a statute's background or alleged purpose could be used to override the principle that statutory language may not be rendered redundant or superfluous, there is no such background evidence of Congress' intent on the specific issue presented here. The fact that, as the Fourth Circuit observed, Congress intended to provide current coal industry pensioners with the lifetime health benefits, does not address, much less resolve, the narrow question of whether the same intent extended to post-enactment pensioners.

Moreover, there is good reason to conclude that Congress only intended to protect certain post-enactment pensioners – age and service pensioners – who, like the current pensioners it was protecting, could have begun receiving the statutorily authorized benefits on February 1, 1993.

First, the language of Sections 9711 and 9712 show that Congress narrowly limited the class of post-enactment pensioners it was protecting. For example, Sections 9711(b)(1) and 9712(b)(2) both limit eligibility to individuals who met certain requirements as of February 1, 1993, and exclude individuals who retired after September 30, 1994. Additionally, Section 9711(e) acknowledges that benefits for some post-enactment pensioners will have to be determined through collective bargaining. Therefore, the Fourth Circuit's basic premise - that Congress intended to make eligible everyone who could have been covered by the prior collectively bargained plans - is not supportable. See also Holland v. Double G Coal Co., Inc., 898 F.Supp. 351, 354 (S.D.W.Va. 1995) (the Coal Act was designed to remedy defects in past benefit coverage, and not to provide for an ever-expanding group of future beneficiaries).

Second, Congress' use of the "age and service" language evidences an intent to restrict the class of post-enactment pensioners even further. Put simply, Congress had no reason to use the "age and service" language - which has no meaning for disability pensioners - except to make clear that eligibility was limited to those who met the criteria for age and service pensions.

Indeed, Congress broadly included all current pensioners in Section 9711(a). Therefore, the omission of such broad language in Section 9711(b)(1), coupled with the "age and service" language, plainly indicates an intent to narrow eligibility to age and service pensioners. Brown v. Gardner, 513 U.S. 115, 120 (1994) ("Where Congress includes particular language in one Section, but omits it in another Section of the Act, it is generally presumed that Congress acted intentionally and purposefully in its disparate

inclusion or exclusion.").

Third, there are good reasons why Congress would limit the class of post-enactment pensioners who were being protected to age and service pensioners who could have retired on or before February 1, 1993. Such a construction would make eligibility under Section 9711(b)(1) co-extensive with that provided under Section 9711(a), because it would make eligible everyone who was receiving benefits as of February 1, 1993 (the Section 9711(a) group), as well as everyone who was not receiving benefits, but could have been receiving benefits by that same date, i.e., who had already met all of the requirements for eligibility, but simply had not yet chosen to retire and lock-in those benefits (the Section 9711(b)(1) group).[3]

The effect of Section 9711(a)(1) is, then, to provide miners who could have retired and begun receiving benefits by February 1, 1993, because they had already satisfied the age and service requirements for a UMWA pension by that date, up to twenty months, through September 30, 1994, before requiring them to choose whether to retire and vest in coverage under the Coal Act or to continue working and look solely to the retiree benefit package in the successor 1993 National Bituminous Coal Wage Agreement ("NBCWA") for their health care benefits after retirement. Significantly, the Section 9711(b)(1) window period did not expand the limited group of miners who could have qualified for benefits under Section 9711(a), and that latter group was expressly addressed

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[3] Post-enactment disability pensioners are unlike the age and service pensioners in that they could not have retired and begun receiving benefits by February 1, 1993, as facts critical to their eligibility, such as a determination of disability by SSA, had not yet occurred.

in Section 9711(e), which provided that they would be handled by collective bargaining.

Under these circumstances, the Coal Act's historical background and general purpose simply are not probative on the narrow question presented here, and if anything, there is good reason to conclude that such information contradicts the Fourth Circuit's interpretation of Sections 9711(b)(1) and 9712(b)(2). Therefore, the Fourth Circuit should not have relied on such factors to construe Sections 9711(b)(1) and 9712(b)(2), much less to override the rule against rendering statutory language redundant or superfluous. State Water Control Board v. Train, 559 F.2d at 924 & n. 20 ("Legislative materials may be without probative value, or contradictory, or ambiguous ... and in such cases will not be permitted to control the customary meaning of words or overcome rules of syntax or construction found by experience to be workable.")[4]

D. Imposing retroactive liability under the Coal Act on related persons is unconstitutional.

When Pea Ridge and Oxide Services were acquired by the control group in 1990 and 1989, respectively, the signatory companies already had done or completed everything they would do with respect to signing or

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[4] Indeed, courts have not hesitated to read the Coal Act literally, rather than adopting interpretations based principally on its alleged purpose or legislative history. See Dixie Fuel Company v. Commissioner of Social Security, 171 F.3d 1052 (6th Cir. 1999); National Coal Association v. Chater, 81 F.3d 1077 (11th Cir. 1996); Fawn Mining Co. v. Hudson, 80 F.3d 519 (D.C. Cir. 1996).

negotiating wage agreements, and their already existing health plans did not include any perpetual funding obligations, much less any obligations at all that could be imposed on Pea Ridge or Oxide Services. Moreover, even if the signatory companies should have had some expectation that they could be held perpetually liable for retiree health benefits as a result of having employed miners and signed labor agreements, the fact remains that Pea Ridge and Oxide Services did not do either of those things.

Moreover, even if imposing control group liability under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, et seq. ("ERISA") and the Multiemployer Pension Plan Amendments Act ("MPPAA") should be upheld because it is a rational way of protecting benefits without creating future disincentives to establishing pension plans, it does not follow that imposing such liability under the Coal Act is equally rational. Unlike the liability imposed under ERISA and MPPAA, the liability imposed here is purely retroactive. As shown by Eastern Enterprises, purely retroactive liability must be justified by something more than a desire to guarantee the payment of benefits, such as having participated in creating an expectation of benefits or having caused harm to the prior UMWA Benefit Plans. No such facts are present here.

E. Conclusion

The Fourth Circuit's interpretation of Sections 9711(b)(1) and 9712(b)(2) necessarily renders redundant and superfluous critical parts of the very language which defines eligibility. For these reasons, this petition should be granted.

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

(Decided June 23, 1999)

No. 98-2353

MICHAEL H. HOLLAND;	)
MARTY D. HUDSON;	)
ELLIOT A. SEGAL; A. FRANK	)
DUNHAM, as Trustees of the	)
UNITED MINE WORKERS OF	)
AMERICA 1992 BENEFIT PLAN,	)
Plaintiffs-Appellees,	)
	)
v.	)
	)
BIG RIVER MINERALS	)
CORPORATION; BIG RIVER	)
COAL CORPORATION; PEA	)
RIDGE IRON ORE COMPANY,	)
INCORPORATED; OXIDE	)
SERVICES CORPORATION;	)
CASTLE ROCK MINING	)
COMPANY; CASTLE ROCK	)
COAL CORPORATION;	)
LONG BRANCH ENERGY	)
CORPORATION; PINNACLE	)
ROCK COAL CORPORATION;	)
PANTHER BRANCH COAL	)

COMPANY, d/b/a Long Branch Energy; BIRCHFIELD MINING, INCORPORATED; DAVIDSON MINING, INCORPORATED; M.A.E.-WEST, INCORPORATED,
Defendants-Appellants,

v.

MICHAEL H. HOLLAND; MICHAEL O. MCKOWN; DONALD E. PIERCE, JR.; ELLIOT A. SEGAL, Trustees of the United Mine Workers of America 1993 Benefit Plan,
Third Party Defendants-Appellees.

OPINION

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. Dennis Raymond Knapp, Senior District Judge.
(CA-97-138-2)

Before WIDENER, MURNAGHAN, and WILKINS, Circuit Judges.

Affirmed in part and reversed in part by published opinion. Judge Wilkins wrote the opinion, in which Judge Widener and Judge Murnaghan joined.

COUNSEL

ARGUED: Charles Leslie Woody, SPILMAN, THOMAS & BATTLE, P.L.L.C., Charleston, West Virginia; David J. Laurent, POLITO & SMOCK, P.C., Pittsburgh, Pennsylvania, for Appellants. Marilyn Louise Baker, MOONEY, GREEN, BAKER, GIBSON & SAINDON, P.C., Washington, D.C., for Appellees.

ON BRIEF: Elizabeth A. Saindon, Joseph R. House, MOONEY, GREEN, BAKER, GIBSON & SAINDON, P.C., Washington, D.C.; Peter Buscemi, MORGAN, LEWIS & BOCKIUS, L.L.P., Washington, D.C.; David W. Allen, Brian H. Benjet, Office of the General Counsel, UMWA HEALTH AND RETIREMENT FUNDS, Washington, D.C., for Appellees.

WILKINS, Circuit Judge:

OPINION

The Trustees of the United Mine Workers of America 1992 Benefit Plan (the "Trustees") brought this action against Coal Companies[1] under the Coal Industry Retiree Health

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[1] We refer to Defendants collectively as "Coal Companies." There are two groups of Coal Companies involved as defendants. The first group--Birchfield Mining, Inc., Davidson Mining, Inc., and M.A.E.-West, Inc.--were signatories to collective bargaining agreements providing health benefits for the retired miners at issue. The remaining Coal Companies-- Big River Minerals Corporation, Big River Coal Corporation, Pea Ridge Iron Ore Company, Inc., Oxide Services Corporation, Castle Rock Mining Company, Castle Rock Coal Corporation, Long

Benefit Act of 1992 (the Coal Act), see 26 U.S.C.A. §§ 9701-22 (West Supp. 1999), claiming that they were liable for the health benefits of 11 former miners who retired due to disabilities as well as the health benefits of their dependents. The district court granted summary judgment in favor of the Trustees. The court subsequently entered a judgment directing Coal Companies to fund the health benefits in the future and to reimburse the Trustees for health benefits previously provided by the 1992 UMWA Benefit Plan, awarding attorney's fees to the Trustees, and imposing an increased prefunding requirement on Coal Companies. Thereafter, the district court denied a motion by Defendants Pea Ridge Iron Ore Company, Inc. (Pea Ridge) and Oxide Services Corporation (Oxide) for reconsideration, see Fed. R. Civ. P. 59, which relied on Eastern Enterprises v. Apfel, 524 U.S. 498, 118 S. Ct. 2131, 141 L.Ed.2d 451 (1998), to argue that 26 U.S.C.A. § 9712(d)(4) of the Coal Act was unconstitutional under the Fifth Amendment as applied to them. Because we conclude that the district court correctly determined that the disabled retirees are eligible beneficiaries under the Coal Act, that Pea Ridge and Oxide waived their constitutional challenge to the Coal Act, and that the award of attorney's fees was appropriate, we affirm the rulings of the district court on these issues. However, we hold that the district court erred in imposing the increased prefunding

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Branch Energy Corporation, Pinnacle Rock Coal Corporation, and Panther Branch Coal Company--are related to the signatory companies and thus are jointly and severally liable for any amounts required to be paid by the signatory company under the Coal Act. See 26 U.S.C.A.§ 9712(d)(4) (West Supp. 1999).

requirement. We therefore vacate that portion of the judgment.

I.

The issue of health care benefits for retired coal industry workers and their dependents has a protracted history. See generally Eastern Enters., 118 S. Ct. at 2137-42 (plurality opinion) (discussing history leading to the enactment of the Coal Act); id. at 2165-66 (Breyer, J., dissenting) (same); Holland v. Keenan Trucking Co., 102 F.3d 736, 738-39 (4th Cir. 1996) (same). Disputes concerning health care for miners date back to the time early in this century when such care was funded with a prepayment plan through payroll deductions and was supplied by company doctors. In the 1930s and 1940s the United Mine Workers of America (UMWA) and coal industry employers sought changes in the method of providing essential services to miners, and from the late 1940s through the early 1970s pension and medical benefits were provided by several UMWA funds created under a series of National Bituminous Coal Wage Agreements (NBCWAs), including a 1950 and a 1974 UMWA Benefit Plan. The funding for these benefits was supplied in part by a royalty on each ton of coal mined and by payroll deductions. As benefits improved under UMWA plans and the number of beneficiaries increased, other factors such as a decrease in the amount of coal produced and a rapid increase in health care costs conspired to produce financial problems for the funds. In response to these financial pressures, the 1978 NBCWA allocated to signatory employers responsibility for the health care costs of their active and retired miners. The 1974 UMWA Benefit Plan remained in place, but was responsible for providing benefits only to "orphaned" retired miners--those whose former employers were no longer in

business. Additionally, signatory operators under the 1978 NBCWA became liable for defined benefits to miners rather than merely for specified contributions of royalties.

Despite this restructuring, the benefit plans continued to suffer financially, and by the late 1980s they were facing insolvency. Unrest concerning this situation led to an 11-month strike beginning in 1989 by mine workers against the Pittston Coal Company, which ended only after the Secretary of Labor intervened and negotiated a settlement. Thereafter, the Secretary established the Advisory Commission on United Mine Workers of America Retiree Health Benefits (the "Coal Commission"), a bipartisan commission formed to assess the financial outlook of the UMWA health benefit plans and to devise possible plans to guarantee their long-term viability. The Coal Commission concluded that retired miners were entitled to the health benefits that had been promised them and that such commitments must be honored; that a statutory obligation to fund the benefits should be imposed on current and former signatories to NBCWAs; and that some means of funding benefits for orphaned miners must be developed. After conducting hearings on the Coal Commission's recommendations, Congress enacted the Coal Act. Congress found:

> [I]n order to secure the stability of interstate commerce, it is necessary to modify the current private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and

> allow for the provision of health care benefits to such retirees.

26 U.S.C.A. § 9701 note.

Toward these goals, the Coal Act legislated three significant changes in health benefits for retired coal workers. First, it consolidated the 1950 and 1974 UMWA Benefit Plans into the United Mine Workers of America Combined Benefit Fund (the "Combined Fund"). See 26 U.S.C.A. § 9702(a)(2). The Combined Fund provides health and death benefits to coal industry retirees who, as of July 20, 1992, were eligible to receive and were receiving benefits from the 1950 or 1974 UMWA Benefit Plans and to those receiving or eligible to receive such benefits as of such date by virtue of a relationship to such a retiree. See 26 U.S.C.A. § 9703. Second, the Coal Act mandated the continuance of individual employer plans maintained by signatories to the 1978 (and subsequent) NBCWAs; these plans provide health coverage for retirees who were receiving or were eligible to receive retiree benefits as of February 1, 1993 and retired on or before September 30, 1994 and their survivors and dependents. See 26 U.S.C.A. § 9711(a)-(b). Third, the Coal Act established the 1992 UMWA Benefit Plan to provide health benefits to retirees who were eligible for but not receiving benefits under the 1950 or 1974 UMWA Benefit Plans and to retirees who, although eligible for coverage under § 9711(b), are not receiving benefits from an individual employer plan. See 26 U.S.C.A. § 9712. Benefits paid by the 1992 UMWA Benefit Plan are funded through premiums paid by the "1988 last signatory operators." Id. § 9712(d)(1). The term "1988 last signatory operator," generally speaking, refers to a coal operator who signed the 1988 NBCWA and

was the most recent coal industry employer of a coal industry retiree. 26 U.S.C.A.§§ 9701(c)(1), (3), (4), 9712(d)(6). Each affected coal operator is required to pay annual and monthly premiums to the 1992 UMWA Benefit Plan and to provide security for the projected cost of covering eligible beneficiaries. See 26 U.S.C.A. § 9712(d)(1).

In order to ensure that coal operators would not be able to avoid their obligations to the 1992 UMWA Benefit Plan, Congress provided that "any related person" to an operator obligated to make payments to the 1992 UMWA Benefit Plan would be jointly and severally liable for those obligations. 26 U.S.C.A. § 9712(d)(4). The term "related person" is defined broadly to include a coal operator's individual partners and corporate affiliates and other trades or businesses controlled by a coal operator's principal shareholder or corporate parent. 26 U.S.C.A. § 9701(c)(2); see also 26 U.S.C.A. §§ 52, 1563(a) (West Supp. 1999).

Section 9712(b) establishes the coverage requirements for the 1992 UMWA Benefit Plan. It provides in pertinent part:

> Eligible beneficiary.--For purposes of this section, the term "eligible beneficiary" means an individual who–
>
> (A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or
>
> (B) with respect to whom coverage is required to be provided under section 9711,

> but who does not receive such coverage from the applicable last signatory operator or any related person, and any individual who is eligible for benefits by reason of a relationship to an individual described in subparagraph (A) or (B). In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.

26 U.S.C.A. § 9712(b)(2). Section 9711(b) in turn provides in pertinent part:

> The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual.

26 U.S.C.A. § 9711(b)(1).

The Trustees brought this action claiming that Coal Companies are liable to fund health benefits under § 9711 or § 9712 for a group of 11 miners, who retired due to disabilities, and their dependents. Coal Companies, on the other hand, asserted that miners who have retired due to a disability are not individuals who have "met the age and service requirements for eligibility to receive" retirement benefits under an individual employer plan maintained by the last signatory operator of a 1978 or subsequent NBCWA, 26 U.S.C.A. § 9711(b)(1), and do not fit the definition of an "eligible beneficiary" because their eligibility to receive benefits from the 1950 or 1974 UMWA Benefit Plan is not "based upon age and service" requirements, 26 U.S.C.A. § 9712(b)(2). Alternatively, Coal Companies maintained that even assuming the 11 miners in question met the age and service requirements, they nevertheless were not entitled to benefits because they did not apply for retirement benefits prior to September 30, 1994 and thus had not retired by that date.

II.

A.

The first question presented is whether Coal Companies are liable under § 9711(b)(1) and § 9712(b)(2) for health benefits of coal workers who meet the eligibility requirements for benefits under individual employer plans created pursuant to 1978 or subsequent NBCWAs or the 1950 or 1974 UMWA Benefit Plans only by reason of their disability. Coal Companies contend that disability retirees are

not covered because they neither (1) qualify as individuals who are eligible to receive benefits under 1978 or subsequent NBCWA agreements because they "met the age and service requirements for eligibility to receive benefits under such plan," 26 U.S.C.A.§ 9711(b)(1), nor (2) satisfy the definition of "[e]ligible beneficiar[ies]" in that they did not become eligible for benefits "based upon age and service earned as of February 1, 1993," 26 U.S.C.A. § 9712(b)(2)(A).

Statutory interpretation necessarily begins with an analysis of the language of the statute. See Landreth Timber Co. v. Landreth, 471 U.S. 681, 685 (1985). And, in analyzing the meaning of a statute, we must first "determine whether the language at issue has a plain and unambiguous meaning." Robinson v. Shell Oil Co., 519 U.S. 337, 340, 117 S.Ct. 843, 136 L.Ed.2d 808 (1997). Our determination of whether a statute is ambiguous is guided "by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." Id. at 341, 117 S.Ct. 843. If the language is plain and "the statutory scheme is coherent and consistent," we need not inquire further. United States v. Ron Pair Enters., Inc., 489 U.S. 235, 240-41, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989). "[T]he sole function of the courts is to enforce [the statute] according to its terms." Caminetti v. United States, 242 U.S. 470, 485, 37 S.Ct. 192, 61 L.Ed. 442 (1917).[2] If the

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[2] Therefore, courts should venture beyond the plain meaning of the statute only in those rare instances in which there is "a clearly expressed legislative intent to the contrary," Russello v. United States, 464 U.S. 16, 20, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983) (internal quotation marks omitted), in which a literal application of the statute would thwart its obvious purpose, see

statutory language is ambiguous, we "look beyond the language of the statute to the legislative history for guidance." Stiltner v.Beretta U.S.A. Corp., 74 F.3d 1473, 1482 (4th Cir. 1996) (en banc). If congressional intent is not apparent from an examination of "the legislative history, we apply the traditional tools of statutory construction." Id.

Coal Companies first maintain that disability retirees satisfy the requirements of neither § 9711(b)(1) nor § 9712(b)(2) because these statutes require eligibility for benefits to be based upon "age and service" earned rather than a disability. In support of this contention, Coal Companies argue that § 9711(b)(1) applies only to individuals who are eligible for benefits under an individual employer plan created by a 1978 or subsequent NBCWA when those individuals have "met the age and service requirements for eligibility." Further, Coal Companies assert that the statutory definition of an "eligible beneficiary" in § 9712(b)(2) requires that a retiree's eligibility to receive benefits from the 1950 or 1974 UMWA Benefit Plans be "based upon" his having satisfied age and service requirements. The Trustees, on the other hand, assert that Coal Companies' reading of the statutes is too strict. The Trustees contend that the references to age and service earned as of February 1, 1993 in § 9711(b)(1) and § 9712(b)(2) were meant to establish only the date after which retirees would not qualify for Coal Act benefits. The reference to age and service requirements does

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Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571, 102 S.Ct. 3245, 73 L.Ed.2d 973 (1982), or in which a literal application of the statute would produce an absurd result, see United States v.American Trucking Ass'ns, 310 U.S. 534, 543, 60 S.Ct. 1059, 84 L.Ed. 1345 (1940).

not disqualify disabled retirees, according to the Trustees, because retirees who were disabled prior to February 1, 1993 met all age and service requirements that applied to them, i.e., none.

In our view, the statutory language is reasonably susceptible to either of these two interpretations. See Robinson, 519 U.S. at 342, 117 S.Ct. 843 (holding statute is ambiguous where it "could just as easily be read to" have one meaning as another); Adler v. Commissioner, 86 F.3d 378, 380 (4th Cir. 1996) (holding statute ambiguous because it was reasonably susceptible to multiple meanings). And, having determined that these provisions are ambiguous, we look to the purpose of the Coal Act, as revealed in the legislative history, to resolve their meaning. See id. at 380-81 (explaining "that we best implement the intent of Congress by construing the statute in a way that gives effect to its purpose"); Andrews v. Riggs Nat'l Bank of Washington, D.C. (In re Andrews), 80 F.3d 906, 909 (4th Cir. 1996) (recognizing that if statutory language is ambiguous, this court will "give it the meaning most consistent with the statute's purpose"). The historical background leading to the enactment of the Coal Act makes clear that Congress intended to provide coal industry retirees with the lifetime benefits they had been promised. Since coal workers had been promised health benefits in the event of their retirement, whether that retirement resulted from a disability or was based solely on their satisfaction of age and service requirements, we conclude that Congress intended that coal industry workers who retired as a result of a disability would be eligible for benefits under § 9711(b)(1) and § 9712(b)(2). See Eastern Enters., 118 S. Ct. at 2140-42 (plurality opinion) (discussing

legislative history); id. at 2166 (Breyer, J., dissenting) (same).

B.

Coal Companies contend alternatively that even if disability retirees may be eligible for benefits under § 9711(b)(1) and § 9712(b)(2), those provisions limit benefits to coal workers who actually filed an application for pension benefits by September 30, 1994. See 26 U.S.C.A. § 9711(b)(1) ("This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such an individual."); 26 U.S.C.A. § 9712(b)(2) ("In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual"). Since the 11 miners at issue here did not file an application for pension benefits before September 30, 1994, Coal Companies argue, the miners are not entitled to benefits. We disagree.

The plain meaning of the word "retired" is "withdrawn from or no longer occupied with one's business or profession." The Random House College Dictionary 1127 (rev. ed. 1980). The plain meaning of the word "retired," therefore, does not encompass only those individuals who receive, or have applied for, pension benefits. Thus, we reject Coal Companies' argument that only those individuals who filed applications for retirement benefits as of September 30, 1994 are eligible for coverage under § 9711(b)(1) and § 9712(b)(2).

C.

In sum, we find § 9711(b)(1) and § 9712(b)(2) to be ambiguous and construe them to have a meaning consistent with the purpose of the Coal Act--to provide lifetime health benefits for retiring miners who had been promised such benefits under the prior labor agreements. Therefore, we conclude that disabled retirees are included among the individuals covered under § 9711(b)(1) and § 9712(b)(2). In addition, we hold that not only those individuals who have filed applications for retirement benefits by September 30, 1994 are eligible for coverage under § 9711(b)(1) and § 9712(b)(2).

III.

Pea Ridge and Oxide, two "related" coal companies--i.e., ones that were not signatories to a prior agreement establishing a benefit plan but that are members of the control group of a signatory company- claim that holding them responsible for contributions to the 1992 UMWA Benefit Plan constitutes a violation of due process and a taking in violation of the Fifth Amendment because they never employed covered miners and were not within the control group when the miners were employed.

As a threshold matter, we must determine whether this issue is properly before the court. Generally, issues that were not raised in the district court will not be addressed on appeal. See Singleton v. Wulff, 428 U.S. 106, 120, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976); Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993) (explaining that issues not raised in district court will not be considered on appeal unless the "refusal to

consider the newly raised issue would be plain error or would result in a fundamental miscarriage of justice"); United States v. One 1971 Mercedes Benz 2-Door Coupe, 542 F.2d 912, 915 (4th Cir. 1976) (explaining that the failure to raise and preserve issue in district court waives consideration of that issue on appeal absent exceptional circumstances); see also United States v. Dickerson, 166 F.3d at 667, 683 (4th Cir. 1999) (recognizing that this court may address issue not raised below in exceptional circumstances). And, an issue presented for the first time in a motion pursuant to Federal Rule of Civil Procedure 59(e) generally is not timely raised; accordingly, such an issue is not preserved for appellate review unless the district court exercises its discretion to excuse the party's lack of timeliness and consider the issue. See Quest Med., Inc. v. Apprill, 90 F.3d 1080, 1087 (5th Cir. 1996) (noting that although courts generally look with disfavor on arguments presented for first time post-trial, district court possesses the discretion to entertain such arguments and if it excuses the default and addresses the merits, the issue is properly preserved for appellate review); see also Pittston Co. Ultramar Am. Ltd. v. Allianz Ins. Co., 124 F.3d 508, 519 n.12 (3d Cir. 1997) (declining to consider on appeal issue raised for first time in party's Rule 59(e) motion); Jorge Rivera Surillo & Co. v. Falconer Glass Indus., 37 F.3d 25, 29 (1st Cir. 1994) (dismissing arguments raised for first time in Rule 59(e) motion and not addressed on merits by district court as not properly before the appellate court); Havoco of Am., Ltd. v. Sumitomo Corp. of Am., 971 F.2d 1332, 1336 (7th Cir. 1992) (stating that arguments that could and should have been made prior to judgment may not be raised for first time in Rule 59(e) motion); cf. 389 Orange St. Partners v. Arnold, 170 F.3d 1200, 1207 (9th Cir. 1999) (explaining that a district court does not abuse its discretion in "declining to

address an issue raised for the first time in a motion for reconsideration"). But cf. Lawson v. Singletary, 85 F.3d 502, 507 (11th Cir. 1996) (per curiam) (concluding that district court abused its discretion in failing to consider issue raised for first time in Rule 59(e) motion).

Pea Ridge and Oxide recognize that they failed to raise their constitutional arguments until their Rule 59(e) motion for reconsideration following the final decision in district court. Nevertheless, they assert that their failure to pursue the issue timely does not constitute a waiver of the constitutional argument because they satisfy an exception to the general rule of waiver. Such an exception exists, they correctly explain, when there has been an intervening change in the law recognizing an issue that was not previously available. See Curtis Publ'g Co. v. Butts, 388 U.S. 130, 142-45, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967) (plurality opinion); Holzsager v. Valley Hosp., 646 F.2d 792, 796 (2d Cir. 1981); see also Pacific Ins. Co. v. American Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998) (explaining that although a Rule 59(e) motion may be granted based on, inter alia, "an intervening change in controlling law," such "motions may not be used. . . to raise arguments which could have been raised prior to the issuance of the judgment. . . [or] to argue a case under a novel legal theory that the party had the ability to address in the first instance"), cert. denied, __ U.S. __, 119 S. Ct. 869, 142 L.Ed.2d 771 (1999). The intervening law exception to the general rule that the failure to raise an issue timely in the district court waives review of that issue on appeal applies when "there was strong precedent" prior to the change, Curtis Publ'g Co., 388 U.S. at 143, 87 S.Ct. 1975 (plurality opinion), such that the failure to raise the issue was not unreasonable and the opposing party was not prejudiced

by the failure to raise the issue sooner, id. at 145, 87 S.Ct. 1975. Pea Ridge and Oxide maintain that prior to the Supreme Court decision in Eastern Enterprises v. Apfel, 524 U.S. 498, 118 S.Ct. 2131, 141 L.Ed.2d 451 (1998), this court had rejected constitutional challenges to the Coal Act and that Eastern Enterprises changed the law, permitting them to raise the constitutional issue at this juncture. We disagree.

First, Eastern Enterprises cannot be viewed as effecting a change in the law of Fifth Amendment takings jurisprudence sufficient to excuse the failure to raise a takings challenge earlier. Eastern Enterprises, decided by a 4-1-4 vote, involved a challenge to the constitutionality of 26 U.S.C.A. § 9706, a provision of the Coal Act different from the one at issue here; that provision imposed retroactive liability for funding the Combined Fund on pre-1978 NBCWA signatories. Four Justices concluded that § 9706 effected an unconstitutional taking. See id. at 2146-53. The remaining five justices rejected the conclusion that an unconstitutional taking was effected, reasoning that the constitutionality of the financial burden on the company imposed by the Coal Act must be considered as a question of substantive due process rather than as a takings question because no identifiable property interest was infringed by the legislation. See id. at 2154-58 (Kennedy, J., concurring in the judgment and dissenting in part); id. at 2161-63 (Breyer, J., dissenting). Consequently, to the extent Eastern Enterprises worked any change with respect to takings jurisprudence, that change was not favorable to Pea Ridge and Oxide's position and therefore does not excuse their failure to raise their takings claim in a timely fashion.

Second, no strong precedent prevented Pea Ridge and Oxide from raising the due process issue earlier. In Holland, we rejected a due process challenge to the 1992 UMWA Benefit Plan, ruling that Congress did not act arbitrarily in concluding that signatories to NBCWAs promising lifetime health benefits should be required to fund those benefits. See Holland, 102 F.3d at 740-42. However, we did not address any separate argument related to liability of members of a control group of such signatories, and that issue remained an open question. Furthermore, Eastern Enterprises did not address whether the Coal Act violated the due process rights of members of a control group of signatories to NBCWAs promising lifetime health benefits for retired miners. Rather, Eastern Enterprises can only be viewed as rendering a decision that Congress acted arbitrarily in imposing retroactive liability on a signatory to NBCWAs in existence prior to those that promised lifetime health benefits to retired miners when that signatory made no promise of lifetime benefits, did not contribute to the problem that caused the funding shortfall for the promised lifetime benefits or to the need for such benefits, and was not put on notice by any governmental action during the relevant time period that it might be subjected to later liability. See Eastern Enters., 118 S. Ct. at 2151-53 (plurality opinion); id. at 2159-60 (Kennedy, J., concurring in the judgment and dissenting in part). The position of members of a control group upon whom liability is imposed only by virtue of that association is different from that of the NBCWA signatory in Eastern Enterprises. And, the considerations bearing upon whether Congress acted rationally in imposing retroactive liability on the NBCWA signatory in Eastern Enterprises are different than those relating to the rationality of imposing liability on members of a control group of a 1978 or subsequent benefit

plan signatory, although admittedly some of the same arguments can be made with respect to both issues.

Thus, we conclude that Eastern Enterprises did not constitute a change in the law permitting Pea Ridge and Oxide to raise their constitutional arguments for the first time in a Rule 59(e) motion. As such, those constitutional issues are not properly preserved for our review.[3]

IV.

The only remaining question is whether the district court erred in imposing an "additional prefunding premium" on Coal Companies as a result of its finding that they were liable for the benefits of the disabled miners and their dependents as claimed by Trustees. In the section of the Coal Act dealing with the guarantee of benefits, Congress directed that the contribution requirement for the plan include:

> the provision of security (in the form of a bond, letter of credit or cash escrow) in an amount equal to a portion of the projected future cost to the 1992 UMWA Benefit Plan of providing health benefits for eligible and potentially eligible beneficiaries attributable to the 1988 last signatory operator. If a 1988 last

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[3] Although the district court ruled that the constitutional claims raised by Pea Ridge and Oxide in their Rule 59(e) motion lacked merit, it did so only as an alternative holding to its principal conclusion that the constitutional issues were not properly before the court because they were not timely raised. The district court, therefore, did not excuse the default.

> signatory operator is unable to provide the security required, the 1992 UMWA Benefit Plan shall require the operator to pay an annual prefunding premium that is greater than the premium otherwise applicable.

26 U.S.C.A. § 9712(d)(1)(C) (emphasis added). The 1992 UMWA Benefit Plan formed by the Trustees established an additional prefunding premium of at least five times the annual funding premium. And, the district court imposed an additional prefunding premium of ten times the annual funding premium on the coal companies here. The language of the statute states that the prefunding provision is to be applied when a company is "unable" to provide the security. Id. The provision does not speak to the situation, like the one at issue here, when absent any showing that a company was unable to post the security, it declined to do so because it did not believe that it was liable. The plain language of the provision, therefore, demonstrates that an increased funding obligation is not applicable in the present situation.

V.

Congress intended through the Coal Act to ensure promised lifetime health benefits to coal industry retirees; therefore, we construe § 9711(b)(1) and § 9712(b)(2) to cover disabled retirees who retired before September 30, 1994 and their beneficiaries and affirm the judgment of the district court imposing liability and awarding attorney's fees.[4] The

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[4] Coal Companies' only challenge to the award of attorney's fees rested on their argument that the district court

additional prefunding premium imposed by the district court, however, was erroneous because there was no showing that the companies were "unable" to provide the appropriate security--only that they did not provide it. Thus, we affirm in part and reverse in part.

AFFIRMED IN PART; REVERSED IN PART

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incorrectly decided that disabled retirees were included as eligible beneficiaries. Having concluded that the district court did not err in this regard, we affirm the award of attorney's fees.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

(Filed July 23, 1999)

No. 98-2353

MICHAEL H. HOLLAND; MARTY D. HUDSON; ELLIOT A. SEGAL; A. FRANK DUNHAM, as Trustees of the UNITED MINE WORKERS OF AMERICA 1992 BENEFIT PLAN	)
Plaintiffs-Appellees,	)
v.	)
BIG RIVER MINERALS CORPORATION; BIG RIVER COAL CORPORATION; PEA RIDGE IRON ORE COMPANY, INCORPORATED; OXIDE SERVICES CORPORATION; CASTLE ROCK MINING COMPANY; CASTLE ROCK	)

COAL CORPORATION; LONG BRANCH ENERGY CORPORATION; PINNACLE ROCK COAL CORPORATION; PANTHER BRANCH COAL COMPANY, d/b/a Long Branch Energy; BIRCHFIELD MINING, INCORPORATED; DAVIDSON MINING, INCORPORATED; M.A.E.-WEST, INCORPORATED, *Defendants-Appellants*,	)
v.	)
MICHAEL H. HOLLAND; MICHAEL O. MCKOWN; DONALD E. PIERCE, JR.; ELLIOT A. SEGAL, Trustees of the United Mine Workers of America 1993 Benefit Plan, *Third Party Defendants-Appellees*.	)

On Petition for Rehearing and Rehearing En Banc

The appellants' petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied;

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,
/s/ _____
Patricia S. Connor, Clerk

APPENDIX C

INTERNAL REVENUE CODE

26 § 9711

26 U.S.C. § 9711(b)

(b) Coverage of eligible recipients.

(1) **In general**. - The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such times as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual.

(2) **Coverage**. - Subject to the provisions of subsection (d), health benefits coverage is described in this paragraph if it is substantially the same as (and subject to all the limitations of) the coverage provided by the individual employer plan as of January 1, 1992. Such coverage shall continue for as long as the last signatory operator (and any related person) remains in business.

APPENDIX D

INTERNAL REVENUE CODE

26 § 9712

26 U.S.C. § 9712(b)

(b) **Coverage requirement.**

(1) **In general.** The 1992 UMWA Benefit Plan shall only provide health benefits coverage to any eligible beneficiary who is not eligible for benefits under the Combined Fund and shall not provide such coverage to any other individual.

(2) **Eligible beneficiary**. For purposes of this section, the term "eligible beneficiary" means an individual who–

(A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or

(B) with respect to whom coverage is required to be provided under section 9711, but who does not receive such coverage from the applicable last signatory operator or any related person, and any individual who is eligible for benefits by reason of a relationship to an individual described in subparagraph (A) or (B). In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any

eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.

Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BIG RIVER MINERALS CORPORATION, et al.,
Petitioners,

v.

MICHAEL H. HOLLAND, et al.,
Respondents.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

SUPPLEMENTAL APPENDIX

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5 SUPP

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APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

[Filed August 25, 1998]

No. 2:97-0138

MICHAEL H. HOLLAND,	)
MARTY D. HUDSON,	)
THOMAS F. CONNORS, and	)
ROBERT T. WALLACE, as	)
Trustees of the UNITED MINE	)
WORKERS OF AMERICA 1992	)
BENEFIT PLAN,	)
Plaintiffs,	)
	)
v.	)
	)
BIG RIVER MINERALS	)
CORPORATION, BIG RIVER	)
COAL CORPORATION, PEA	)
RIDGE IRON ORE COMPANY,	)
INC., OXIDE SERVICES	)
CORPORATION, CASTLE	)
ROCK MINING COMPANY,	)
CASTLE ROCK COAL	)
CORPORATION, LONG	)
BRANCH ENERGY	)
CORPORATION, PINNACLE	)

ROCK COAL CORPORATION,)
PANTHER BRANCH COAL)
COMPANY, dba LONG)
BRANCH ENERGY, INC.,)
BIRCHFIELD MINING, INC.,)
DAVIDSON MINING, INC.,)
and M.A.E. - WEST)
INCORPORATED,)
Defendants.)
)
and)
)
BIRCHFIELD MINING, INC.,)
DAVIDSON MINING, INC.,)
and M.A.E. - WEST)
INCORPORATION,)
Third-Party Plaintiffs,)
)
v.)
)
MICHAEL H. HOLLAND,)
DONALD E. PIERCE, JR.,)
THOMAS F. CONNORS, and)
ELLIOT A. SEGAL, Trustees of)
the United Mine Workers of)
America 1993 Benefit Plan,)
Third-Party Defendants.)
)

JUDGMENT ORDER

In accordance with the Court's Memorandum Opinion of even date herewith, which Memorandum Opinion is now

ORDERED filed and made a part of the record in this action, it is hereby ORDERED that defendants' motion for reconsideration be denied.

The Clerk is further directed to forward certified copies of this Judgment Order to counsel of record herein.

DATED: Aug. 25, 1998

/s/_____
DENNIS R. KNAPP, JUDGE

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

[Filed August 25, 1998]

No. 2:97-0138

MICHAEL H. HOLLAND,	)
MARTY D. HUDSON,	)
THOMAS F. CONNORS, and	)
ROBERT T. WALLACE, as	)
Trustees of the UNITED MINE	)
WORKERS OF AMERICA 1992	)
BENEFIT PLAN,	)
Plaintiffs,	)
	)
v.	)
	)
BIG RIVER MINERALS	)
CORPORATION, BIG RIVER	)
COAL CORPORATION, PEA	)
RIDGE IRON ORE COMPANY,	)
INC., OXIDE SERVICES	)
CORPORATION, CASTLE	)
ROCK MINING COMPANY,	)
CASTLE ROCK COAL	)
CORPORATION, LONG	)
BRANCH ENERGY	)
CORPORATION, PINNACLE	)

ROCK COAL CORPORATION,)
PANTHER BRANCH COAL)
COMPANY, dba LONG BRANCH)
ENERGY, INC.,BIRCHFIELD)
MINING, INC.,DAVIDSON)
MINING, INC.,and M.A.E. -)
WEST INCORPORATED,)
Defendants.)
)
and)
)
BIRCHFIELD MINING, INC.,)
DAVIDSON MINING, INC.,)
and M.A.E. - WEST)
INCORPORATION,)
Third-Party Plaintiffs,)
)
v.)
)
MICHAEL H. HOLLAND,)
DONALD E. PIERCE, JR.,)
THOMAS F. CONNORS, and)
ELLIOT A. SEGAL, Trustees of)
the United Mine Workers of)
America 1993 Benefit Plan,)
Third-Party Defendants.)
)

MEMORANDUM OPINION

Pending before the Court is the motion of defendants for reconsideration. All memoranda being submitted, this matter is ripe for decision.

This case began when the UMWA 1992 Benefit Plan and its Trustees ("1992 Plan") filed suit against Big River Minerals Corporation and twelve related companies for failure to comply with Sections 9711 and 9712 of the Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act"), 26 U.S.C. §§ 9711, 9712. Plaintiffs alleged that Defendants failed to provide health care coverage to certain disabled retirees covered by the Coal Act. Defendants asserted that those retirees did not meet the Coal Act's eligibility requirements. This Court held in its September 3, 1997, Memorandum Opinion that the disability pensioners at issue are eligible for Coal Act benefits and that Big River and other defendants are responsible for that coverage. In its Memorandum Opinion and Judgment Order of June 18, 1998, this Court held defendants are liable for per-beneficiary premiums, annual pre-funding premiums, interest, liquidated damages, attorney fees and costs, totaling $1,035,732.80, exclusive of fees and costs. The Court further held, among other things, that defendants must provide health benefits to those named disabled retirees through an individual employer plan.

Defendants have filed for reconsideration of this Court's July 18th order upon the grounds that under the recent Supreme Court decision in Eastern Enterprises v. Apfel, 66 U.S.L.W. 4566 (June 25, 1998) the Coal Act is unconstitutional as applied to two of defendant companies, Pea Ridge Iron Ore Company, Inc. and Oxide Services Corp.

Defendants further assert that this Court should reverse its decision on the eligibility of disabled pensioners and adopt the more recent district court case, Penn Allegh Coal Co. v. Holland, C. A. No. 97-121 (HHK) (July 22, 1998).

It should be noted that the defendants have failed to adequately raise the issue of constitutionality of the Coal Act in any of their substantive pleadings prior to judgment entered in June, 1998. The defendants are procedurally barred from raising this issue post judgment. United States v. Olano, 507 U.S. 725, 731 (1993) [citing Yakus v. U. S., 321 U.S. 414 [144 (1944)]. As the Court previously ruled on the issue in a prior decision, defendants are barred because they "have never raised the constitutionality of the statute in pleadings filed with the court prior to the motion for stay and have not sought to amend any prior pleading to appropriately raise such a challenge.

Yet, this Court will address the arguments of Defendants Pea Ridge and Oxide wherein defendants attempt to rely on the Supreme Court's decision in Eastern in that the Coal Act violates the Takings Clause and the Due Process Clause of the Fifth Amendment as it applies to them.

In Eastern Enterprises, the Supreme Court was confronted with a company that was assigned Combined Fund beneficiaries by the Social Security Administration pursuant to Section 9706(a)(3) of the Coal Act. That section provides for assignment of beneficiaries to companies that were signatory to National Bituminous Coal Wage Agreements ("NBCWA") prior to the effective date of the 1978 NBCWA. The plurality opinion explicitly limits its analysis to assignments made to Eastern Enterprises pursuant to Section 9706(a)(3). Eastern Enterprises, 1998 U.S. LEXIS *70 (plurality opinion); see also id. at *120 (Kennedy, J., concurring in judgment).

The present case arises under Section 9711 and 9712 of the Coal Act and not Section 9706(a)(3). The liabilities at issue in this case all relate to the UMWA 1992 Benefit Plan and not the UMWA Combined Benefit Fund as in Eastern Enterprises. Further, Defendants Birchfield Mining, Inc., Davidson Mining, Inc., and M.A.E. West Incorporated were all signatory to the National Bituminous Coal Wage Agreement of 1988. The retroactivity that concerned the plurality and Justice Kennedy in Eastern Enterprises is simply not present under these facts. This Court is of the opinion that there has not been an intervening change in the law on which the Court based its prior judgment. Accordingly, defendants' arguments must fail on that point.

Defendants seek to rely on the plurality opinion in Eastern to support the proposition that the Coal Act as applied to them violates the Takings Clause. The plurality's opinion in Eastern, however, is the opinion of four justices, not the majority, and thus is not binding on this Court. See, e.g., Powers v. Alabama Dept. of Education, 854 F.2d 1285, 1291 n. 11 (11th Cir. 1988), cert. denied, 490 U.S. 1107 (1989) ("A plurality opinion, however, is not binding precedent. . . ."). See also King v. Palmer, 950 F.2d 771, 783 (D.C. Cir. 1991) (fragmented Supreme Court decision not controlling authority, where plurality of four justices disagreed with reasoning of concurring fifth justice). To the contrary, the only legal reasoning in Eastern that did command a majority of the Court (Justice Kennedy, concurring in the judgment and dissenting in part, and Justices Breyer, Stevens, Souter, and Ginsburg in dissent) and that, therefore, governs in the lower federal courts, is that the Takings Clause simply has no application to economic regulatory measures such as the Coal Act. See 118 S. Ct. at

2154 (Kennedy, J.) ("To call this sort of governmental action a taking as a matter of constitutional interpretation is both imprecise and, with all due respect, unwise"). See also 118 S. Ct. at 2161 (Breyer, J.) ("I agree with Justice Kennedy that the plurality views this case through the wrong legal lens. The Constitution's Takings Clause does not apply.").

Defendants also now assert that the Coal Act violates the Due Process Clause. Although five justices in Eastern concluded that the Coal Act should be analyzed under the Due Process Clause, only one of those justices (Justice Kennedy) concluded that the Coal Act violates the Due Process Clause when applied to Petitioner Eastern Enterprises. The four dissenters disagreed with Justice Kennedy and concluded that the Coal Act passes constitutional muster under the Due Process Clause, even when applied to a pre-1974 signatory operator like Eastern. See, e.g., 118 S. Ct. at 2161-68 (Breyer, J.) and 2160-61 (Stevens, J.) (noting that pre-1974 signatories such as Eastern contributed to miners' expectation of receiving lifetime health benefits, even though collective bargaining agreements did not make explicit reference to lifetime benefits until 1974).

Defendants further argue that if the Coal Act is unconstitutional as applied, to Eastern, it must also be unconstitutional as applied to Defendants Pea Ridge and Oxide. The Court disagrees. Pea Ridge and Oxide are liable under Section 9712(d)(4) of the Coal Act because they are "related persons" to Birchfield, Davidson, and M.A.E. West Inc., companies that signed collective bargaining agreements with the UMWA in 1988. The Supreme Court in Eastern did not consider the provisions of the Coal Act pertaining to related persons. No court has ever questioned the validity of

those provisions. In addition, both Pea Ridge and Oxide, by their own admission, became members of the controlled group of companies including the signatory operators long after the signatories had signed collective bargaining agreements referring to lifetime health care for the retirees of signatory employers. Unlike Eastern Enterprises, which left the coal industry in 1965, did not sign the 1974 or any subsequent NBCWA, and was not a "related person" to any post-1974 signatory when the Coal Act was passed in 1992, the companies here were under common control with companies that expressly promised lifetime health benefits to retired coal miners and their dependents. Eastern is, therefore, readily distinguishable from this case.

Also, control group liability has long been a central tenet underlying the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1001 et seq.

Defendants second argument rests on the holding in Penn Allegh. In 1997, the Court held that defendants are responsible under Sections 9711 and 9712 of the Coal Act for the health coverage of disability pensioners that retired from certain of the defendant companies. These retirees worked for Defendants Birchfield Mining, Inc., Davidson Mining, Inc. and M.A.E.-West Inc., were injured in mine accidents while in the employ of those companies, and retired with disability pensions from the UMWA 1974 Pension Plan as a result.

The Coal Act provides that "eligible beneficiary" means individuals who

> (A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or
>
> (B) with respect to whom coverage is required to be provided under section 9711, but who does not receive such coverage from the applicable last signatory operator or any related person,
>
> . . .In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.

26 U.S.C. S 9712(b)(2). Essentially, defendants challenged the eligibility of their disabled retirees on the grounds that the retirees, while totally and permanently disabled on or before September 30, 1994, did not submit their pension applications before September 30, 1994. Defendants argue that in order to be considered "retired," an individual must have applied for a pension. Defendants further argued that the Coal Act does not cover disability pensioners who were not disabled prior to February 1, 1993, or, in the alternative, does not cover disability retirees at all because they are not required to meet the "age and service" requirements applicable to regular service pensions. This Court rejected defendants, challenge and upheld the 1992 Plan Trustees' interpretation of Section 9712(b)(2) of the Coal Act, under which retirees are eligible

for benefits if they became totally and permanently disabled in a mine accident on or before September 30, 1994, even if they did not submit pension applications until after that date, as reasonable and consistent with the intent of Congress in passing the statute.

Similar facts were present in the Penn Allegh case. That case was initiated by Penn Allegh, which filed suit after the UMWA Health and Retirement Funds referred a disability pensioner to the company for health care coverage pursuant to Section 9711 of the Coal Act. This retiree had become disabled in a mine accident before September 30, 1994, while working for Penn Allegh, but did not file his pension application until after that date. Contrary to this Court's decision, Judge Kennedy ruled in favor of Penn Allegh. The court held that, because disability retirees do not have to meet the age and service requirements for a regular pension, they are ineligible for health benefits under the Coal Act unless they were already receiving benefits from their employers' Individual Employer Health Plans as of February 1, 1993. This decision is based on the language in Sections 9711(b)(1) and 9712(b)(2)(A), which refers to "age and service. . .as of February 1, 1993" as a factor in determining eligibility under the Coal Act. 26 U.S.C. §§ 9711(b)(1), 9712(b)(2)(A). As this Court recognized, however, disability pensioners have met all of the applicable age and service requirements once they are injured in a mine accident because they may begin receiving a disability pension at any age and regardless of the length of their service. The interpretation advanced by the Penn Allegh court, if allowed to stand, would result in the affected retiree losing health care coverage for himself and his dependents under the Coal Act simply because eligibility for a disability pension does not depend on attainment of a

specific age or duration of service. If adopted in other jurisdictions, the ruling would threaten the health care long promised to numerous disabled retirees. The Court is of the opinion that this result is utterly contrary to the intent of Congress and should not be extended to this case.

Accordingly, for the reasons set forth hereinabove, it is hereby ORDERED that defendants' motion for reconsideration be denied.

The Clerk is directed to send copies of this Memorandum Opinion to counsel of record herein.

DATED: Aug. 25, 1998

/s/_____
DENNIS R. KNAPP, JUDGE

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

[Filed June 18, 1998]

No. 2:97-0138

MICHAEL H. HOLLAND,	)
MARTY D. HUDSON,	)
THOMAS F. CONNORS, and	)
ROBERT T. WALLACE, as	)
Trustees of the UNITED MINE	)
WORKERS OF AMERICA 1992	)
BENEFIT PLAN,	)
Plaintiffs,	)
	)
v.	)
	)
BIG RIVER MINERALS	)
CORPORATION, BIG RIVER	)
COAL CORPORATION, PEA	)
RIDGE IRON ORE COMPANY,	)
INC., OXIDE SERVICES	)
CORPORATION, CASTLE	)
ROCK MINING COMPANY,	)
CASTLE ROCK COAL	)
CORPORATION, LONG	)
BRANCH ENERGY	)
CORPORATION, PINNACLE	)

ROCK COAL CORPORATION,)
PANTHER BRANCH COAL)
COMPANY, dba LONG)
BRANCH ENERGY, INC.,)
BIRCHFIELD MINING, INC.,)
DAVIDSON MINING, INC.,)
and M.A.E. - WEST)
INCORPORATED,)
Defendants.)
)
and)
)
BIRCHFIELD MINING, INC.,)
DAVIDSON MINING, INC.,)
and M.A.E. - WEST)
INCORPORATION,)
Third-Party Plaintiffs,)
)
v.)
)
MICHAEL H. HOLLAND,)
DONALD E. PIERCE, JR.,)
THOMAS F. CONNORS, and)
ELLIOT A. SEGAL, Trustees of)
the United Mine Workers of)
America 1993 Benefit Plan,)
Third-Party Defendants.)
)

MEMORANDUM OPINION

Pending before the Court are the cross-motions for summary judgment filed by the parties herein. Having

carefully reviewed the parties' motions, memorandum and exhibits, the Court is now prepared to render its ruling.

Plaintiffs, Trustees of the United Mine Workers of America 1992 Benefit Plan, bring this cause of action requesting the Court to find that the defendant coal companies owe plaintiffs for beneficiary premiums and for entry of an order requiring defendants to provide health benefits coverage to their retirees through an individual employer plan pursuant to the Coal Industry Retiree Health Benefit Act of 1992. 26 U.S.C. § 9701 et seq.

Defendants argue that certain beneficiaries are not age and service qualified to receive benefits and further seek a preliminary injunction.

The Court begins its analysis by noting that the United States Supreme Court has held that:

> [T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to

> make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

Courts must be careful, however, to insure that in assessing a motion for summary judgment, all justifiable inferences are drawn in favor of the nonmoving party for "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge. . . ." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). Moreover, courts "must perform a dual inquiry into the genuineness and materiality of any purported factual issues." Ross v. Communications Satellite Corp., 759 F.2d 355, 364 (4th Cir. 1985)(emphasis added). "As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Anderson, 477 U.S. at 248. While "[g]enuineness means that the evidence must create fair doubt; wholly speculative assertions will not suffice." Ross, 759 F.2d at 364; accord Goldberg v. B. Green & Co. Inc., 836 F.2d 845, 848 (4th Cir. 1988); Felty v. Graves-Humphreys Co., 818 F.2d 1126, 1128 (4th Cir. 1987); Ash v. United Parcel Service Inc., 800 F.2d 409, 411-12 (4th Cir. 1986).

After thoroughly reviewing the record in light of these principles:

> [T]he judge must ask himself not whether he thinks the evidence unmistakably favors one side or the other but whether a fair-minded jury could return a verdict for the [nonmovant] on the evidence presented. The mere existence of a scintilla of evidence in support of the [nonmovant's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [nonmovant].

Anderson, 477 U.S. at 252.

Where such analysis reveals the absence of any genuine issues of material fact, the nonmoving party should be cognizant of "the affirmative obligation of the trial judge to prevent factually unsupported claims and [sic] defenses' from proceeding to trial." Felty, 818 F.2d at 1128 (quoting Celotex Corp., 477 U.S. at 323-24).

The Court has already found that Defendants Birchfield, Davidson and M.A.E. West were all signatory to the National Bituminous Coal Wage Agreement of 1988 and, therefore, are last signatory operators as defined in the Coal Act, 26 U.S.C. § 9701 *et seq.* Holland v. Big River Minerals Corp., C.A. 2:97-0138 at p. 8 (S.D. W. Va. June 16, 1997). Additionally, this Court found that Defendants Big River Minerals Corp., Big River Coal Corp., Pea Ridge Iron Ore Company, Inc., Oxide Services Corp., Castle Rock Mining Company, Long Branch Energy Corp., Pinnacle Rock Coal Corp., and Panther Branch Coal Co., d/b/a Long Branch Energy, Inc., were in a controlled group of companies with Birchfield, Davidson and M.A.E. West as of July 20, 1992, and thus, are related persons to Birchfield, Davidson and

M.A.B. West as defined in Section 9701(c)(2)(A) of the Coal Act. Further, this Court held that the last signatory operators and related persons are jointly and severally liable for obligations under the Coal Act.

The 1992 Plan has determined the following beneficiaries to be eligible for benefits from the 1992 Plan and attributed them to Birchfield: Samuel G. Sadler, Julie Sadler, Samantha Sadler, Asher Sadler, Maynard Wallace, Mary M. Maynard, Wallace Maynard, Jr., Richard Craddock, Patty A. Craddock, Richard L. Craddock, II, Jack E. Beckett, Nichole R. Craddock, Harold D. Williams, Lena K. Williams, Jennifer L. Williams, Michael D. Williams, William C. Hurd, Jr., Jackie L. Gautier, Deborah Gautier, Olga Gautier, Brandon Gautier, Dewey A. Harvey, Aretta F. Harvey, Thurmond H. Morton, Brenda Morton and Debra K. Pierce.

The 1992 Plan has determined the following beneficiaries to be eligible for benefits from the 1992 Plan and attributed them to Davidson: Joe R. Wilcoxen, Bonnie Wilcoxen, Floyd H. Buchanan, Toni L. Buchanan, Phoebe C. Buchanan, Henry L. Buchanan, Katherine E. Buchanan, Harold W. Whaples, Sue A. Whaples, Amy L. Whaples, Jimhazel Milan, Zada Milam, David M. McKinney, Sharon McKinney, Kasey McKinney, Krista McKinney, Albert A. Murdock, Martin R. Gunnoe, Roger L. Hatten, Vickie Hatten, Stacy Hatten, Lisa Hatten, Gary C. Conley, Pamela S. Conley, Craig A. Conley, Shelly A. Conley, Lydge L. Burns, Letha J. Burns, Randall D. Bragg, Vanessa Bragg, Randall D. Bragg, Jr., Jerry D. Rawls and Jewell C. Rawls.

The 1992 Plan has determined the following beneficiaries to be eligible for benefits from the 1992 Plan and

attributed them to Davidson: Robert Dingess, Jerry L. Cox, Melba R. Cox, Richard E. Casto, Clarice A. Casto, Henry C. Halstead, Juanita Halstead, Andrea D. Morgan, George D. Vannatter, Ramona F. Vannatter, George D. Vannatter, II, Brandy L. Vannatter, Christy D. Vannatter, Charles Thomas, Marie Thomas, Michael D. Williams, Sherry Williams, Michael Williams, III, Brenda L. Asbury and Robert J. Asbury.

Section 9711(a) of the Coal Act explicitly requires that former employers maintaining retiree health plans on February 1, 1993, pursuant to a current or past National Bituminous Coal Wage Agreement continue to maintain those plans for as long as the last signatory operator, and any related person, remains in business. 26 U.S.C. § 9711(a) Similarly section 9711(b) of the Coal Act requires former employers to maintain an individual employer plan for persons that become eligible for benefits prior to October 1, 1994, but were not receiving benefits as of February 1, 1993. 26 U.S.C. § 9711(b).

As of February 25, 1998, defendants were not providing health care benefits to the following Birchfield, Davidson and M.A.E. West retirees and their eligible dependents: Samuel G. Sadler, Julie Sadler, Asher Sadler, Wallace Maynard, Mary M. Maynard, Wallace Maynard, Jr., Richard L. Craddock, Patty A. Craddock, Jack E. Beckett, Nichole R. Craddock, Harold D. Williams, Lena K. Williams, Jennifer L. Williams, Michael D. Williams, Jackie L. Gautier, Deborah Gautier, Brandon Gautier, Thurmond H. Morton, Brenda Morton, David M. McKinney, Sharon McKinney, Kasey McKinney, Krista McKinney, Albert A. Murdock, Gary C. Conley, Pamela S. Conley, Shelly A.

Conley, Lydge L. Burns, Letha J. Burns, Randall D. Bragg, Vanessa Bragg and Randall D. Bragg, Jr., George D. Vannatter, Ramona F. Vannatter, George D. Vannatter, II, Brandy L. Vannatter, Christy D. Vannatter, Michael D. Williams, Sherry Williams, and Michael Williams, III. To insure that Birchfield, Davidson, and M.A.E. West's pensioners and their dependents would not be harmed while the Trustees brought this action, the 1992 Plan began providing health benefits to Birchfield, Davidson, and M.A.E. West's pensioners and their dependents. Since Section 9711(a) of the Coal Act places the burden of providing health care coverage on the defendants, not the 1992 Plan, failure by the defendants to provide such a plan constitutes injury to the 1992 Plan. Accordingly, the Court is of the opinion that the defendants must provide an individual employer health plan to cover Birchfield, Davidson and M.A.E. West's pensioners and their eligible dependents.

As a result of the defendants' failure to provide health benefits to their retirees as required by Section 9711 of the Coal Act, the 1992 Plan provided those benefits directly to the beneficiaries and, as a result of the 1992 Plan, is entitled to be reimbursed for the cost of providing those benefits.

As signatories to the 1988 National Bituminous Coal Wage Agreement, Birchfield, Davidson, and M.A.E. West are "signatory operators" under Section 9701(c)(1) of the Coal Act, 26 U.S.C. 9701(c)(1). Furthermore as noted above, this Court previously held that Birchfield, Davidson and M.A.E. West are "last signatory operators" as defined in Section 9701(c)(4) of the Coal Act, 26. U.S.C. § 9701(c)(4), because they are signatory operators which were the most recent coal industry employer of certain retirees.

Further, each 1988 last signatory operator is liable for the payment of annual pre-funding premiums for each "eligible beneficiary." 26 U.S.C. § 9712(d)(1)(A) and (B). Defendants must submit accurate remittance advice forms within fourteen (14) days of the entry of this Order.

Section 9712(d)(3) of the Coal Act, 26 U.S.C. § 9712(d)(3), makes each last signatory operator liable for the payment of a monthly per-beneficiary premium for each eligible beneficiary described in Section 9712(b)(2) of the Coal Act, 26 U.S.C. § 9712(b)(2), who is attributable to the 1988 last signatory operator and who is receiving benefits under the UMWA 1992 Benefit Plan. Section 9712(d)(3) of the Coal Act, 26 U.S.C. § 9712(d)(3), states that "[a]ny last signatory operator who is not a 1988 last signatory operator shall pay the monthly per-beneficiary premium under [Section 9712(d)(1)(B)] for each eligible beneficiary. . .attributable to that operator."

The Court is of the opinion that this provision of the Coal Act requires Birchfield, Davidson and M.A.E. West to pay the monthly per-beneficiary premiums for the beneficiaries attributed to them. Further, the Trustees have attributed beneficiaries to Birchfield, Davidson and M.A.E. West.

Pursuant to 26 U.S.C. § 9712(d)(1)(C), defendants were required to post security for the payment of benefits to their retirees. Because of defendants' failure to report the exact number of eligible beneficiaries attributable to them, defendants posted security in a deficient amount. The defendants were notified of this failure by letter on April 8, 1998, and apparently failed to properly post the security

required by the Coal Act. Accordingly, the defendants must submit a remittance advice form disclosing the number of beneficiaries in their individual employer plan and the number of beneficiaries in the 1992 Plan within fourteen (14) days of entry of this order.

Further, as a result of the defendants' failure to post the required security, the defendants are required to pay additional pre-funding premiums. See 26 U.S.C. § 9712(d)(1)(C); Article XI of the United Mine Workers of America 1992 Benefit Plan Agreement and Declaration of Trust. The Trustees have set the rate for this additional pre-funding premium as ten times the annual pre-funding premium. See UMWA 1992 Benefit Plan Security Provisions Master Resolution.

Section 9721 of the Coal Act, 26 U.S.C. § 9721, directs that Section 4301, 29 U.S.C. § 1451, of ERISA shall apply to any claim arising out of an obligation to pay any amount required to be paid by the Coal Act in the same manner as any claim arising out of an obligation to pay withdrawal liability. In turn, Section 4301(b) of ERISA, 29 U.S.C. § 1451(b), directs that a failure by an employer to pay withdrawal liability shall be treated in the same manner as a delinquent contribution. Thus, delinquent obligations imposed by the Coal Act are treated as delinquent contributions under ERISA.

Section 515 and 502(g)(2) of ERISA, 29 U.S.C. §§ 1145 and 1132(g)(2), concern actions to recover delinquent contributions and are, therefore, applicable to this action. Section 515 of ERISA, 29 U.S.C. § 1145, imposes an obligation upon an employer to make contributions to a multi-

employer plan in accordance with the employer's obligations under the terms of a plan or a collectively bargained agreement.

Section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), lists the recovery that a court shall award in actions brought by fiduciaries under Section 515 to collect delinquent contributions. Section 502(g)(2) of ERISA, 29 U.S.C. § 1132(g)(2), requires this Court to award interest, liquidated damages, reasonable attorney's fees and costs to the Trustees in addition to the amount of the unpaid annual pre-funding and monthly per-beneficiary premiums.

Section 502(g)(2)(E) of ERISA, 29 U.S.C. § 1132(g)(2)(E) provides that interest on the unpaid premiums is to be determined by using the rate provided under thespian, or, if none, the rate prescribed under Section 6621 of the Internal Revenue Code ("IRC"). 26 U.S.C. § 6621. In this case, since the UMWA 1992 Benefit Plan's plan documents provide no separate interest rates, IRC Section 6621 is controlling.

The UMWA 1992 Benefit Plan's plan documents do, however, contain a provision for liquidated damages. ERISA Section 502(g)(2)(C) provides that the court shall award the greater of (i) the interest on the unpaid premiums or (ii) liquidated damages provided for under the plan in an amount not in excess of 20% of the unpaid premiums. 29 U.S.C. § 1132(g)(2)(C)(i). Article XI(7) of the UMWA 1992 Benefit Plan's Trust Document states that 1988 Agreement Operators, such as Birchfield, Davidson and M.A.E. West, who fail to comply with any financing requirements "shall be assessed liquidated damages in an amount equal to the greater of

twenty percent (20%) of the amount owed or the amount of interest charged."

Pursuant to the above reasoning and since no genuine issue of fact exists, the Court finds that the Trustees are entitled to an award for Birchfield, Davidson and M.A.E. West's monthly per-beneficiary premiums to the UMWA 1992 Benefit Plan, interest; additional pre-funding premiums, interest; liquidated damages, reasonable attorney fees and costs pursuant to Section 9721 of the Coal Act, 26 U.S.C. § 9721, and Sections 502(g)(2), 515 and 4301(b) of ERISA, 29 U.S.C. §§ 1132(g)(2), 1145 and 1451(b).

Accordingly, the Court must enter judgment for the Trustees and against the defendants for per-beneficiary premiums, annual pre-funding premiums, interest, liquidated damages, attorney's fees and costs, issue an order requiring defendants to pay all future premiums to the 1992 Plan as they come due; issue an order requiring defendants to directly provide health benefits to Samuel G. Sadler, Julie Sadler, Asher Sadler, Wallace Maynard, Mary M. Maynard, Wallace Maynard, Jr., Richard L. Craddock, Patty A. Craddock, Jack E. Beckett, Nichole R. Craddock, Harold D. Williams, Lena K. Williams, Jennifer L. Williams, Michael D. Williams, Jackie L. Gautier, Deborah Gautier, Brandon Gautier, Thurmond H. Morton, Brenda Morton, David M. McKinney, Sharon McKinney, Kasey McKinney, Krista McKinney, Albert A. Murdock, Gary C. Conley, Pamela S. Conley, Shelly A. Conley, Lydge L. Burns, Letha J. Burns, Randall D. Bragg, Vanessa Bragg and Randall D. Bragg, Jr., George D. Vannatter, Ramona F. Vannatter, George D. Vannatter, II, Brandy L. Vannatter, Christy D. Vannatter, Michael D. Williams, Sherry Williams, Michael Williams, III through an

individual employer plan; issue an order requiring defendants to submit remittance advice forms disclosing all of the eligible and potentially eligible beneficiaries for purposes of calculating annual pre-funding premiums and the amount of security required to be posted; and issue an order requiring defendants to post additional security.

The defendants must submit all required advice forms within fourteen days of entry of the attached Judgment Order.

The plaintiffs must submit information regarding reasonable attorney's fees and costs within fourteen days of entry of the attached Judgment Order with defendants' response thereto filed fourteen days thereafter.

The Clerk is directed to send copies of this Memorandum Opinion to counsel of record herein.

DATED: June 18, 1998

/s/_____
DENNIS R. KNAPP, JUDGE

APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

[Filed September 3, 1997]

No. 2:97-0138

MICHAEL H. HOLLAND,	)
MARTY D. HUDSON,	)
THOMAS F. CONNORS, and	)
ROBERT T. WALLACE, as	)
Trustees of the UNITED MINE	)
WORKERS OF AMERICA 1992	)
BENEFIT PLAN,	)
Plaintiffs,	)
	)
v.	)
	)
BIG RIVER MINERALS	)
CORPORATION, BIG RIVER	)
COAL CORPORATION, PEA	)
RIDGE IRON ORE COMPANY,	)
INC., OXIDE SERVICES	)
CORPORATION, CASTLE	)
ROCK MINING COMPANY,	)
CASTLE ROCK COAL	)
CORPORATION, LONG	)
BRANCH ENERGY	)
CORPORATION, PINNACLE	)

ROCK COAL CORPORATION, PANTHER BRANCH COAL COMPANY, dba LONG BRANCH ENERGY, INC., BIRCHFIELD MINING, INC., DAVIDSON MINING, INC., and M.A.E. - WEST INCORPORATED,
Defendants.

and

BIRCHFIELD MINING, INC., DAVIDSON MINING, INC., and M.A.E. - WEST INCORPORATION,
Third-Party Plaintiffs,

v.

MICHAEL H. HOLLAND, DONALD E. PIERCE, JR., THOMAS F. CONNORS, and ELLIOT A. SEGAL, Trustees of the United Mine Workers of America 1993 Benefit Plan,
Third-Party Defendants.

JUDGMENT ORDER

In accordance with the Court's Memorandum Opinion of even date herewith, which Memorandum Opinion is now

ORDERED filed and made a part of the record in this action, it is hereby ORDERED that the motion for partial summary judgment of the Trustees of the 1992 Plan be granted. It is also ORDERED that the motion by defendants in opposition and for an order denying plaintiffs' motion for partial summary judgment be denied.

It is further ORDERED that judgment be entered in favor of the 1992 Plan and against defendants on all counts of defendants' counterclaim and on defendants' sixth, seventh and thirteenth defenses.

The Clerk is directed to send certified copies of this Judgment Order to counsel of record herein.

DATED: Sept. 3, 1997

/s/_____
DENNIS R. KNAPP, JUDGE

APPENDIX I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

[Filed September 3, 1997]

No. 2:97-0138

MICHAEL H. HOLLAND,	)
MARTY D. HUDSON,	)
THOMAS F. CONNORS, and	)
ROBERT T. WALLACE, as	)
Trustees of the UNITED MINE	)
WORKERS OF AMERICA 1992	)
BENEFIT PLAN,	)
Plaintiffs,	)
	)
v.	)
	)
BIG RIVER MINERALS	)
CORPORATION, BIG RIVER	)
COAL CORPORATION, PEA	)
RIDGE IRON ORE COMPANY,	)
INC., OXIDE SERVICES	)
CORPORATION, CASTLE	)
ROCK MINING COMPANY,	)
CASTLE ROCK COAL	)
CORPORATION, LONG	)
BRANCH ENERGY	)
CORPORATION, PINNACLE	)

ROCK COAL CORPORATION, PANTHER BRANCH COAL COMPANY, dba LONG BRANCH ENERGY, INC., BIRCHFIELD MINING, INC., DAVIDSON MINING, INC., and M.A.E. - WEST INCORPORATED,
Defendants.

and

BIRCHFIELD MINING, INC., DAVIDSON MINING, INC., and M.A.E. - WEST INCORPORATION,
Third-Party Plaintiffs,

v.

MICHAEL H. HOLLAND, DONALD E. PIERCE, JR., THOMAS F. CONNORS, and ELLIOT A. SEGAL, Trustees of the United Mine Workers of America 1993 Benefit Plan,
Third-Party Defendants.

MEMORANDUM OPINION

Pending before the Court is the motion for partial summary judgment filed by the plaintiffs herein, the United

Mine Workers of America 1992 Benefit Plan. At issue in this case is the determination of the 1992 Plan Trustees that disability pensioners who were permanently disabled on or before September 30, 1994, are eligible to receive benefits from the1992 Plan.

The Trustees of the United Mine Workers of America 1992 Benefit Plan (1992 Plan) filed this action against Defendants Birchfield Mining, Inc. ("Birchfield"), Davidson Mining, Inc. ("Davidson"), and M.A.E. - West Incorporated ("M.A.E. - West"), which were signatures to the National Bituminous Coal Wage Agreement of 1988 ("1988 NBCWA") but not signatory to the National Bituminous Coal Wage Agreement of 1993 ("1993 NBCWA"). Plaintiffs also joined as defendants Big River Minerals Corp. and others which are related companies or within a control group of the three signatory companies.

In their complaint, plaintiffs assert that defendants in this action are jointly and severally liable for the provision of health benefits to disability pensioners who were permanently disabled on or before September 30, 1994, and who are eligible to receive benefits from the 1992 Plan. Plaintiffs allege defendants" liability pursuant to the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701 et seq. ("Coal Act").

In plaintiffs motion for partial summary judgment, they seek an initial determination as to whether these disability pensioners were properly determined to be eligible for the 1992 Plan; plaintiffs do not seek in the motion a determination as to an amount of defendants' liability.

Defendants filed an answer and counterclaim against the 1992 Plan asserting that the Trustees have impermissibly assigned the defendant signatory companies' disability retirees to the 1992 Plan in violation of the provisions of the Coal Act. Specifically, defendants have asserted the noneligibility of various beneficiaries in their sixth, seventh, and thirteenth defense in their answer. Additionally, the three former signatory companies filed a third-party complaint against the Trustees of the 1993 Plan which seeks a declaration that Sections 9711(b) and 9712(b) of the Coal Act, 26 U.S.C. § 9711(b) and 9712(b) et seq. neither require nor authorize the provision of retiree health benefits to (1) disability pensioners who are not disabled on or before February 1, 1993, and/or who failed to apply for such benefits until after September 30, 1994, and (2) to any disabled miners under any circumstances or, in the alternative, disabled miners who were disabled prior to February 1, 1993, and/or who failed to apply for such benefits until after September 30, 1994.

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper:

> If the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits on file, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law.

The party moving for summary judgment has the burden to show initially the absence of a genuine issue concerning any material fact. Adickes v. S. H. Kress & Co., 398 U.S. 144, 159 (1970). However, once the moving party

has met its initial burden, the burden shifts to the nonmoving party to "establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 1066, 322 (1988). The nonmoving party cannot rely on its pleadings to discharge this burden, but instead must have evidence showing that there is a genuine issue for trial. Id. at 324.

In October, 1992, Congress enacted the Coal Act. The Coal Act was the product of nearly two years of intensive study and debate concerning the funding crisis threatening retiree health care in the nation's coal fields. Congress created a comprehensive funding scheme to ensure a funding base for the provision of coal industry retiree health benefits. The fundamental principle underlying the legislation is that "those companies which employed the retirees in question, and thereby benefitted from their services, will be assigned responsibility in providing the health care benefits. . ." 138 Cong. Rec. § 17603 (daily ed. Oct. 8, 1992).

The Coal Act implemented a new financing structure through three mechanisms, one of which was the creation of the 1992 Plan to provide benefits to those persons who retired before October 1, 1994, and who should be covered by individual employer plans under Section 9711, but whose employers fail to provide such coverage. 26 U.S.C. § 9712(b)(2)(B). The 1992 Plan also provides benefits to persons who, based on their age and service earned as of February 1, 1993, could have retired and received benefits from the 1950 or 1974 Trusts had those plans remained in existence, and who retired between July 20, 1992, and October 1, 1994. 26 U.S.C. § 9712(b) (2).

Under the Coal Act, the 1992 Plan is financed through two kinds of premiums, a per beneficiary premium and a prefunding premium. 26 U.S.C. § 9712(d)(1). The per beneficiary premium is assessed against operators who are assigned beneficiaries in an amount sufficient to pay for health benefits for those retirees and dependents who are receiving benefits from the 1992 Plan. 26 U.S.C. § 9712(d)(1)(B).

The prefunding premium is assessed against each "1988 Last Signatory Operator" defined generally as signatory operators which were signatory to the 1988 National Bituminous Coal Wage Agreement, 26 U.S.C. §§ 9701(c)(3), 9712(d)(1), 9712(d)(6), whether or not they actually have beneficiaries in the 1992 Plan. The prefunding premium is adjusted in part to cover the cost to the 1992 Plan of providing benefits for beneficiaries for whom no per beneficiary premiums have been paid. 26 U.S.C. § 9712(d)(1)(A). As a result, employers who are required to pay prefunding premiums must finance benefits for retirees who receive benefits from the 1992 Plan but whose former employers fail to pay the required per beneficiary premiums.

In addition, Section 9712(d)(4) broadens liability for these premiums as follows:

> (4) Joint and several liability. A 1988 last signatory operator. . . , and any related person to any such operator, shall be jointly and severally liable with such operator for any amount required to be paid by such operator under this section.

Similarly, Section 9711(c) provides that "[e]ach related person of a last signatory operator to which subsection (a) or (b) applies shall be jointly and severally liable with the last signatory operator for the provision of health care coverage described in subsection (a) or (b). Additionally, successors to the last signatory operator or any related persons are also jointly and severally liable for the obligations imposed by the Coal Act. See 26 U.S.C. § 9701(c)(2)(A) and 9711(g)(1).

During a meeting of the Board of Trustees of the UMWA 1992 Benefit Plan on October 6, 1993, the Court is of the opinion that the Trustees decided that the Plan would provide health coverage to disability pensioners who became eligible as a result of disabilities occurring on or before September 30, 1994. Further review illustrates that the Trustees also concluded that disability pensioners "retired" on the date they became disabled as certified by the Social Security Administration. The Trustees had to act on these inquiries since the term"retired" is not defined by the 1992 Plan document, trust agreement, or the Coal Act.

The 1992 Plan filed this instant action to compel defendants to comply with their statutory obligations by providing the requisite health care to various disability pensioners. Defendants assert that they have no obligations to various disability pensioners who were not disabled on or before February 1993, and/or who failed to apply for such benefits until after September 30, 1994, and who are not eligible for health coverage pursuant to the Coal Act.

The fundamental principle underlying the Coal Act is that "those companies which employed the retirees in

question, and thereby benefited from their services, will be assigned responsibility for providing the health care benefits. . . ." 138 Cong. Rec. § 17603 (daily ed. Oct. 8, 1992) (statement of Senator Wallop). To effectuate this purpose, Congress designed a coordinated structure for providing benefits, under which the former employees of the retirees provide benefits directly to the retirees and finance the benefits provided by the 1992 Plan.

Congress also designed the basic eligibility for receiving the benefits provided under the statute. Again, those requirements are quite broad, reflecting the effort of Congress to ensure continued provision of health care to covered retirees. Section 971(b) of the Coal Act provides:

> The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual.

26 U.S.C. § 9711(b). Section 9712(b)(2) of the Coal Act provides:

> For purposes of this section, the term "eligible beneficiary" means an individual who --
>
> (A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 Benefit Plan, based upon age and service earned as of February 1, 1993; or
>
> (B) with respect to whom coverage is required to be provided under section 9711, but who does not receive such coverage from the applicable last signatory operator or any related person.
>
> . . . In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.

26 U.S.C. § 9712(b)(2). The Coal Act thus defines the basic eligibility criteria for benefits from individual employers plans under Section 9711, and for benefits from the 1992 Plan under Section 9712. While the Coal Act limits benefits to those who "retired" prior to October 1, 1994, the term "retired" is not defined in the statute.

In the Coal Act, Congress directed the "settlors" to create 1992 Plan, dictating that "[t]he settlors shall be responsible for designing the structure, administration and terms of the 1992 UMWA Benefit Plan, and for appointment and removal of the members of the board of trustees." 26 U.S.C. § 9712(a)(1). The settlors are the UMWA and the BCOA. 26 U.S.C. § 9701(b)(2). Pursuant to this directive, the settlors developed a plan of benefits and a trust agreement, which constitute the governing documents of the 1992 Plan. The settlors also appointed the 1992 Plan Trustees.

The eligibility language set forth in the Plan document tracks the language of the statute. Because the term "retired" is not defined in the Plan document or the Coal Act, the 1992 Plan Trustees were required to interpret the term in order to determine the eligibility of certain retirees. The Court is of the opinion that in order to give effect to the intent of Congress in the Coal Act, the Trustees determined that, in the case of disability pensioners, the retirees were "retired" on the date that they became disabled, as certified by the Social Security Administration. The Court agrees with the 1992 Plan determination that a different interpretation would have rendered such individuals ineligible for benefits under the Coal Act simply because they did not file a pension application before October 1, 1997, even though they had ceased performing covered work in the coal industry when they became disabled.

We must now turn our attention to the standard of review by this Court of the Trustees' determination. The relevant inquiry is whether the Trustees' determination is consistent with the Coal Act and is a reasonable exercise of the Trustees' discretion under the Plan documents.

In Firestone Tire & Rubber v. Bruch, 489 U.S. 101, 115 (1989), the Supreme Court held that review of trustees' decisions should be de novo unless the plan documents confer discretion on the trustees to determine benefit eligibility or to construe the terms of the plan. Id. at 113. If the plan allows for such discretion, the "reviewing court may disturb the challenged [decision] only upon showing of procedural or substantive abuse." DeNobel v. Vitro Corp., 885 F.2d 1180, 1186 (4th Cir. 1989).

The 1992 Plan's Trust Agreement does confer upon its Trustees the discretion to determine benefit eligibility, and provides:

> Subject to the provisions of the Coal Industry Retiree Health Benefit Act of 1992, this Trust and the Plan, the Trustees shall have full and exclusive authority and discretion to determine all questions of coverage and eligibility . . . They shall have full discretionary power to construe the provisions of this Agreement and Declaration of Trust and the Plan.

Trust Agreement, Article V, second paragraph.

Following Firestone, the Fourth Circuit construed substantially similar language contained in the governing documents of the UMWA 1974 Pension Plan. There, the Fourth Circuit held that the plan expressly confers upon the Trustees "full and final" authority in determining eligibility for benefits based upon Article VIII A and Article VIII B. (1) of the 1974 Pension Plan. Hale v. United Mine Workers Health & Retirement Funds, 23 F.3d 899, 901 (4th Cir.

1994). See also Lockhart v. UMWA 1974 Pension Trust, 5 F.3d 74, 77 (4th Cir. 1993); Richards v. United Mine Workers Health & Retirement Fund, 895 F.2d 133 (4th Cir. 1990); Boyd v. Trustees of the UMWA Health & Retirement Funds, 873 F.2d 57, 59 (4th Cir. 1989). The language in the Trust Agreement which confers "full and exclusive" authority for eligibility determinations to the Trustees requires the same construction, in light of the Firestone decision, as did the language in the 1974 Pension Plan. Therefore, a court must review the 1992 Plan Trustees' decisions determining eligibility based upon an abuse of discretion standard.

In determining whether the trustees have abused their discretion, a court may not substitute its own judgment for that of the trustees; it may only consider whether the trustees have offered a reasonable interpretation of the disputed evidence. Hale, Lockhart, DeNobel, supra. Courts when analyzing the trustees'interpretation must consider the following factors: whether the interpretation is consistent with the goals of the plan; whether the interpretation renders some language in the plan meaningless or internally inconsistent; whether the interpretation violates the procedural and substantive requirements of ERISA; whether the provisions applied have been applied consistently; and whether the interpretation is contrary to the plain language of the plan. Lockhart at 77 (citing DeNobel).

The Court is of the opinion that the Trustees' interpretation at issue here clearly passes the above test. The standards for determining who is a retiree and when that status is conferred is a decision properly left to those with discretion to administer the Plan, here the Trustees. The Trustees of the 1992 Plan have made that determination in

accordance with the longstanding policies that are both reasonable and in accordance with the law. The eligibility determination made by the 1992 Plan is consistent with Congress' mandate to protect these retirees' health benefits. See generally Holland v. Keenan Trucking Co., 102 F.3d 736, 739 (4th Cir. 1996).

As such, the Trustees' determination that a miner disabled in a mine accident prior to October 1, 1994 but who does not apply for retiree benefits until after October 1, 1994, is retired prior to October 1, 1994, is a reasonable interpretation of the Coal Act requirement that 1992 Plan coverage not be provided to a miner who returned from the coal industry after September 30, 1994, and is, therefore, not an abuse of discretion.

Therefore, in accordance with the above; and since no genuine issue of fact exists, this Court is of the opinion that plaintiffs' motion for partial summary judgment must be granted and that judgment must be entered in favor of the 1992 Plan and against the defendants on all counts of defendants' counterclaim and on defendants sixth, seventh, and thirteenth defenses.

The Clerk is directed to send copies of this Memorandum Opinion to counsel of record herein.

DATED: Sept. 3, 1997

/s/_____
DENNIS R. KNAPP, JUDGE

APPENDIX J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

[Filed September 3, 1997]

No. 2:97-0138

MICHAEL H. HOLLAND,	)
MARTY D. HUDSON,	)
THOMAS F. CONNORS, and	)
ROBERT T. WALLACE, as	)
Trustees of the UNITED MINE	)
WORKERS OF AMERICA 1992	)
BENEFIT PLAN,	)
Plaintiffs,	)
	)
v.	)
	)
BIG RIVER MINERALS	)
CORPORATION, BIG RIVER	)
COAL CORPORATION, PEA	)
RIDGE IRON ORE COMPANY,	)
INC., OXIDE SERVICES	)
CORPORATION, CASTLE	)
ROCK MINING COMPANY,	)
CASTLE ROCK COAL	)
CORPORATION, LONG	)
BRANCH ENERGY	)
CORPORATION, PINNACLE	)

ROCK COAL CORPORATION,)
PANTHER BRANCH COAL)
COMPANY, dba LONG BRANCH)
ENERGY, INC.,BIRCHFIELD)
MINING, INC.,DAVIDSON)
MINING, INC., and M.A.E. -)
WEST INCORPORATED,)
Defendants.)
)
and)
)
BIRCHFIELD MINING, INC.,)
DAVIDSON MINING, INC.,)
and M.A.E. - WEST)
INCORPORATION,)
Third-Party Plaintiffs,)
)
v.)
)
MICHAEL H. HOLLAND,)
DONALD E. PIERCE, JR.,)
THOMAS F. CONNORS, and)
ELLIOT A. SEGAL, Trustees of)
the United Mine Workers of)
America 1993 Benefit Plan,)
Third-Party Defendants.)
)

MEMORANDUM OPINION AND ORDER

Pending before the Court is the motion to dismiss the third-party complaint filed by the third-party defendants, the Trustees of the 1993 Benefit Plan.

The claim asserted by the third-party plaintiffs against the 1993 Benefit Plan is predicated on the eligibility determination made by the 1992 Benefit Plan being overturned by this Court. As set forth in this Court's Memorandum Opinion and Judgment Order on this action entered on August , 1997, this Court agrees with the eligibility determination made by the 1992 Benefit Plan. Therefore, under the set of facts adopted by this Court, the third-party complaint does not allege a cause of action against the 1993 Benefit Plan and it must be dismissed. Dismissal of a complaint is warranted if the plaintiff can show no set of facts in-support of the claims which would entitle him to relief. Martin Marietta Corp. v. Int'l. Telecommunications Satellite Org., 991 F.2d 94 (4th Cir. 1992).

Accordingly, it is hereby ORDERED that the motion to dismiss of third-party plaintiff 1993 Benefit Plan is granted. It is further ORDERED that the motion in opposition to the third-party defendants' motion to dismiss filed by the third-party plaintiffs be denied.

The Clerk is directed to send copies of this Memorandum Opinion and Order to counsel of record herein.

DATED: Sept. 3, 1997

/s/_____
DENNIS R. KNAPP, JUDGE

APPENDIX K

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

[Filed June 16, 1997]

No. 2:97-0138

MICHAEL H. HOLLAND,	)
MARTY D. HUDSON,	)
THOMAS F. CONNORS, and	)
ROBERT T. WALLACE, as	)
Trustees of the UNITED MINE	)
WORKERS OF AMERICA 1992	)
BENEFIT PLAN,	)
Plaintiffs,	)
	)
v.	)
	)
BIG RIVER MINERALS	)
CORPORATION, BIG RIVER	)
COAL CORPORATION, PEA	)
RIDGE IRON ORE COMPANY,	)
INC., OXIDE SERVICES	)
CORPORATION, CASTLE	)
ROCK MINING COMPANY,	)
CASTLE ROCK COAL	)
CORPORATION, LONG	)
BRANCH ENERGY	)
CORPORATION, PINNACLE	)

ROCK COAL CORPORATION, PANTHER BRANCH COAL COMPANY, dba LONG BRANCH ENERGY, INC., BIRCHFIELD MINING, INC., DAVIDSON MINING, INC., and M.A.E. - WEST INCORPORATED,
Defendants.

and

BIRCHFIELD MINING, INC., DAVIDSON MINING, INC., and M.A.E. - WEST INCORPORATION,
Third-Party Plaintiffs,

v.

MICHAEL H. HOLLAND, DONALD E. PIERCE, JR., THOMAS F. CONNORS, and ELLIOT A. SEGAL, Trustees of the United Mine Workers of America 1993 Benefit Plan,
Third-Party Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the Court is the motion to dismiss filed pursuant to Rule 12(b) of the Federal Rules of Civil Procedure

of Defendant Pea Ridge Iron Ore Company, Inc. ("Pea Ridge"). Oxide Service Corp. ("Oxide") has also moved to dismiss and to join in Defendant Pea Ridge Iron Ore's motion to dismiss. The defendants move for dismissal asserting lack of jurisdiction over defendants since both companies were divested by former parent company Big River Minerals in November 1996 and, therefore, are not a related person under Section 9701(c) of the Coal Industry Retiree Health Benefits Act of 1992 ("Coal Act"), 26 U.S.C. § 59701, *et seq.*

Plaintiffs (Trustees of the 1992 Benefit Plan of the UMWA) filed this action against defendants seeking declaratory judgment and enforcement of various provisions of the Coal Act. Plaintiffs allege that the Coal Act provides for the maintenance of individual employer health plans sponsored by signatories to certain National Bituminous Coal Wage Agreements and their related persons for various retirees and eligible defendants. The defendants' obligation to provide such health plans is the subject of the civil action.

For purposes of deciding a motion to dismiss the evidence must be interpreted by the Court in the light most favorable to the party opposing the motion. Myron Laboratories, Inc. v. AKZO, N.V., 2 F3d 56 (4th Cir. 1993). In deciding a motion to dismiss the Court must draw all reasonable inferences from the proof and resolve all factual disputes in plaintiff's favor. Myron Laboratories, supra. Where factual statements are proffered and no authority otherwise contradicting the evidence is offered, the pleadings will be construed in the light most favorable to the party opposing the motion. One who moves for judgment has the burden of demonstrating there is no genuine issue of fact. Any doubt as to the existence of such an issue is resolved

against him. International Union, District 50, UMW v. Matthiessen and Hegeler Zinc Co., 291 F. Supp. 578 (N.D. W. Va. 1968). Since the factual allegations contained in the complaint are undisputed by the defendants, those allegations concerning the ownership of Pea Ridge and Oxide must be taken as true for the purpose of determining the motion to dismiss.

Defendant Pea Ridge is or was a Missouri corporation with an office in St. Louis. Defendant Oxide is or was a Delaware corporation with an office in Indianapolis, Indiana. Defendants Birchfield Mining, Davidson Mining, M.A.E. West, Inc. were each signatory to the National Bituminous Coal Wage Agreement of 1988 ("wage agreement"). Pursuant to the wage agreement, Birchfield, Davidson and M.A.E. West were required to maintain an individual employer plan to provide health benefits to their retirees and eligible dependents.

As of July 20, 1992, Birchfield, Davidson and M.A.E. West were wholly owned subsidiaries of Castle Rock Mining Company, a wholly owned subsidiary of Big River Minerals Corporation. Defendants Pinnacle Rock Coal Corp., Pea Ridge Iron Ore, Oxide, Long Branch Energy, and Panther Branch Coal d/b/a Long Branch Energy, are, either directly or indirectly, wholly owned subsidiaries of Big River Minerals Corp. on July 20, 1992.

In their motion to dismiss, Pea Ridge and Oxide assert that this Court lacks jurisdiction over these two defendants since neither conducts business in West Virginia nor does Big River Minerals who owned 100 percent of the outstanding shares of stock of Pea Ridge and Oxide on July 20, 1992.

Both were divested by the parent corporation in November 1996, just prior to plaintiffs' filing of this complaint. Further, Pea Ridge and Oxide assert that there is no jurisdiction over the two defendants just because an alleged related company, Big River Minerals, is doing business in West Virginia.

Plaintiffs contend that defendants' arguments on jurisdiction fail since the Coal Act provides for nationwide service of process and further that Pea Ridge and Oxide are "a related person" to Big River Minerals under the Coal Act and can be made a party defendant herein. The appropriate date for determining the existence of a related person is July 20, 1992.

The Court is of the opinion that Section 9721 of the Coal Act, 26 U.S.C. § 9721, incorporates the nationwide service of process provision of Section 4301(d) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 26 U.S.C. § 1451(d). Section 9721 of the Coal Act, entitled "Civil Enforcement," provides for the application of ERISA, Section 4301, for enforcement of obligations imposed by the Coal Act. Accordingly, the nationwide service of process provision applies herein to Pea Ridge and Oxide. The record indicates that plaintiffs served Pea Ridge's registered agent and that plaintiffs' can achieve personal service over Oxide. Further, when process is served under a federal nationwide service of process provision, as the one found in § 4301(d) of ERISA and applicable herein, the Courts have and continue to apply a national contacts test to determine if personal jurisdiction exists. Driver v. Helms, 577 F.2d 147, 156-57 (1st Cir. 1978), reversed on other grounds sub. nom. Stafford v. Briggs, 444 U.S. 527 (1980);

Texas Trading & Milling Corp. v. Federal Republic of Nigeria, 647 F.2d 300, 314 (2d Cir.), cert. denied 454 U.S. 1148 (1981); Bersch v. Drexel Firestone, Inc., 519 F.2d 974, 998-1000 (2d Cir.), cert. denied 423 U.S. 1018 (1975); Horne v. Adolph Coors Co., 684 F.2d 255, 259-60 (3d Cir. 1982); Hogue v. Milodon Engineering, Inc., 736 F.2d 989, 991 (4th Cir. 1984); Bellaire General Hosp. v. Blue Cross Blue Shield of Michigan, 97 F.3d 822, 825-26 (5th Cir. 1996); Federal Trade Commission v. Jim Walter Corp., 651 F.2d 251, 255-56 (5th Cir. 1981); Fitzsimmons v. Barton, 589 F.2d 330, 333-34 (7th Cir. 1979); Securities Investors Protection Corp. v. Vigman, 764 F.2d 1309, 1314-16 (9th Cir. 1985); National Patent Dev. Corp. v. T.J. Smith & Nephew Ltd., 877 F.2d 1003, 1009 (D.C. Cir. 1989).

Under the "national contacts" standard, personal jurisdiction exists if a defendant is present in, or has contacts with, the United States. Driver v. Helms, 577 F.2d 147, 156-57 (1st Cir. 1978), reversed on other grounds sub. nom. Stafford v. Briggs, 444 U.S. 527 (1980); Texas Trading & Milling Corp. v. Federal Republic of Nigeria, 647 F.2d 300, 314 (2d Cir.), cert. denied 454 U.S. 1148 (1981); Bersch v. Drexel Firestone, Inc., 519 F.2d 974, 998-1000 (2d Cir.), cert. denied 423 U.S. 1018 (1975); Horne v. Adolph Coors Co., 684 F.2d 255, 259-60 (3d Cir. 1982); Hogue v. Milodon Engineering, Inc., 736 F.2d 989, 991 (4th Cir. 1984); Bellaire General Hosp. v. Blue Cross Blue Shield of Michigan, 97 F.3d 822, 825-26 (5th Cir. 1996); Federal Trade Commission v. Jim Walter Corp., 651 F.2d 251, 255-56 (5th Cir. 1981); Fitzsimmons v. Barton, 589 F.2d 330, 333-34 (7th Cir. 1979); Securities Investors Protection Corp. v. Vigman., 764 F.2d 1309, 1314-16 (9th Cir. 1985); National Patent Dev. Corp. v. T. J. Smith & Nephew Ltd.,

877 F.2d 1003, 1009 (D.C. Cir. 1989). Pea Ridge admits that it is or was a Missouri corporation and Oxide admits it was a subsidiary of American Oxide, a subsidiary of Big River Minerals, a Delaware corporation and that it maintains offices in Indiana. Thus, Pea Ridge's and Oxide's presence in, and contacts with, the United States are clearly sufficient to establish personal jurisdiction in this Court.

Turning focus to defendants' second argument regarding their relation to Big River Minerals, this Court is of the opinion that Defendants Pea Ridge and Oxide are related persons to Big River Minerals under the Coal Act. Pursuant to the Coal Act, "related persons" are jointly and severally liable for certain obligations of signatory coal operators. In this case, Pea Ridge and Oxide are "related persons" to Birchfield Mining, Davidson Mining, and M.A.E. - West, Inc. and are jointly and severally liable for their obligations under Sections 9711 and 9712(d) of the Coal Act.

The term related person is defined in Section 9701(c)(2)(A) of the Coal Act, 26 U.S.C. § 9701 as follows: "a person shall be considered to be a related person to a signatory operator if that person is a member of the controlled group of corporations (within the meaning of section 52(a)) which includes such a signatory operator."

In turn, 26 U.S.C. § 52(a) states that "the term 'controlled group of corporations' has the meaning given to such term in section 1563(a) except that 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1)." In relevant part, Section 1563(a), 26 U.S.C. § 1563(a), states:

> [T]he term 'controlled group of corporations' means any group of. . .one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or a least 80 percent of the total shares of all classes of stock of each of the corporations, except the common parent, is owned by one or more of the other corporations and the common parent corporation owns stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or a least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations. . . .

Under Section 9701(c)(2)(B) of the Coal Act, 26 U.S.C. § 9701(c)(2)(B), the relationships described above are determined "as of July 20, 1992, except that if, on July 20, 1992, a signatory operator is no longer in business, the relationships shall be determined as of the time immediately before such operator ceased to be in business." There is no dispute as to whether Big River remains "in business" within the meaning of the Coal Act. Thus, July 20, 1992, is the appropriate date as of which to determine the control group.

Pea Ridge and Oxide have admitted that on July 20, 1992, Big River owned 100% of the outstanding stock of Pea Ridge and Big River Coal Corporation. Moreover, the 1992 Plan has alleged that Big River Coal Corporation owned, on July 20, 1992, 100% of Castle Rock Mining Company

("Castle Rock") and Castle Rock owned 100% of Birchfield, Davidson and M.A.E. Birchfield, Davidson and M.A.E. were signatory to the 1978, 1984 and 1988 National Bituminous Coal Wage Agreements and are, therefore, "signatory operators" and "last signatory operators" under the Coal Act.

Plainly, Pea Ridge, Oxide, Big River Coal Corporation, Big River, Davidson, Birchfield and M.A.E. are members of a controlled group of corporations on July 20, 1992, because they were a group of "one or more chains of corporations connected through a common parent." Big River was the common corporate parent and the ownership "links" between the members of the group were 100 percent. Thus, Pea Ridge, Oxide, Davidson, Birchfield and M.A.E. were members of a controlled group of corporations on July 20, 1992, and consequently, are "related persons" under the Coal Act.

Under Sections 9711(c) and 9712(d)(4), persons related to last signatory operators are jointly and severally liable to the 1992 Benefit Plan for the obligations of the last signatory operators. The Coal Act flatly contradicts the two defendants' contentions that it "would not under any definition be considered a related person for liability purposes." In the Coal Act, Congress defined "related persons" precisely and, by its plain terms, this definition captures Pea Ridge and Oxide.

It is also clear that any subsequent severing of the controlled group relationship after July 20, 1992, does not relieve any members of that controlled group from their joint and several liability under the Coal Act. First, it makes no sense whatsoever to determine "related person" status as of

July 20, 1992, and then ignore that determination for liability purposes. Second, the cases on pension plan withdrawal liability which have interpreted analogous controlled group liability provisions unequivocally hold that subsequent events that break up a controlled group do not permit a former control group member to escape liability. Board of Trustees of Trucking Employees North Jersey Welfare Fund, Inc. v. Centra, 983 F.2d 495, 501 (3rd Cir. 1992); Teamsters Joint Council No. 83 v. Centra, Inc., 947 F.2d 115, 121 (4th Cir. 1991); Connors v. Brady-Cline Coal Co., 668 F. Supp. 5, 9 (D.C. 1987).

In conclusion, Pea Ridge and Oxide have admitted that they were wholly-owned subsidiaries of Big River on July 20, 1992. Based on this admission, the Court is of the opinion that Pea Ridge and Oxide were members of Big River's control group, which included last signatory operators Birchfield, Davidson and M.A.E., as of that date and, thus, Pea Ridge and Oxide are "related persons" to last signatory operators Birchfield, Davidson and M.A.E. under the Coal Act. The Court further believes that Pea Ridge and Oxide as "related persons" to last signatory operators Birchfield, Davidson and M.A.E., are jointly and severally liable to the 1992 Plan for their failure to provide health benefits to its retirees under Section 9711 of the Coal Act.

Accordingly, it is hereby ORDERED that the motions to dismiss of Defendants Pea Ridge and Oxide are denied.

The Clerk is directed to send copies of this Order to counsel of record herein.

DATED: June 16, 1997

/s/_____
DENNIS R. KNAPP, JUDGE

Supreme Court, U.S.
FILED
DEC 17 1999

(3)

No. 99-751

In the Supreme Court of the United States

BIG RIVER MINERALS CORPORATION, *et al.*,
Petitioners

v.

MICHAEL H. HOLLAND, *et al.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS UMWA 1992 BENEFIT PLAN AND ITS TRUSTEES

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QUESTIONS PRESENTED

1. Whether the courts below correctly ruled that the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), 26 U.S.C. §§ 9701 *et seq.*, does not exclude from statutory health coverage certain pensioners who retired from the coal industry before September 30, 1994, as a result of permanent and total disabilities that they sustained in mine accidents while in petitioners' employ.

2. Whether the courts below correctly ruled that petitioners Pea Ridge Iron Ore Company and Oxide Services Corporation waived any argument that the Coal Act is unconstitutional as applied to them.

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IN THE SUPREME COURT OF THE UNITED STATES

No. 99-751

BIG RIVER MINERALS CORPORATION, *et al.*,
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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF IN OPPOSITION FOR RESPONDENTS UMWA 1992 BENEFIT PLAN AND ITS TRUSTEES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-22a) is reported at 181 F.3d 597 (4th Cir. 1999). The opinions of the district court (Pet. Supp. App. 29a - 84a) are unreported.

STATUTE INVOLVED

This case concerns the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701 *et seq.* and 30 U.S.C. § 1232(h) (the "Coal Act"), which was enacted as Title XIX, Subtitle C, of the Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776, 3036-56.

STATEMENT OF THE CASE

I. INTRODUCTION

The court of appeals in this case determined that, in enacting the Coal Act, Congress did not exclude disability pensioners from coverage simply because they were not required to attain a specific age or minimum number of years of service in order to qualify for a pension. The decision is entirely consistent with the decisions of both other courts of appeals that have addressed the question. *See Penn Allegh Coal Co. v. Holland,* 183 F.3d 860, 864 (D.C. Cir. 1999); *Pennsylvania Mines Corp. v. Holland,* 1999 U.S. App. LEXIS 30356, *17 (3d Cir. Nov. 22, 1999). As in *Penn Allegh* and *Pennsylvania Mines*, the court of appeals construed statutory language in Sections 9711(b)(1) and 9712(b)(2) of the Coal Act that referred to the requirement that beneficiaries meet "age and service" requirements as of February 1, 1993. Petitioners admit (Pet. 5 n.2) that the decision below is consistent with that of the D.C. Circuit in *Penn Allegh*; the petition was filed before the Third Circuit decided *Pennsylvania Mines*. Notwithstanding the lack of any disagreement among the courts of appeals, petitioners contend that the decision below "conflicts with Fourth Circuit and Supreme Court decisions holding that a statute cannot be construed in a manner that renders language redundant or superfluous." Pet. 3. As the court of appeals held, however, the language at issue is ambiguous, and the interpretation advanced by the Trustees of the UMWA 1992 Benefit Plan ("1992 Plan") does not render any statutory language "redundant" or "superfluous."

Petitioners fare no better with respect to their proposed constitutional challenge to application of the Coal Act to petitioners Pea Ridge Iron Ore Company ("Pea Ridge") and

Oxide Services ("Oxide"). As the court of appeals held, that argument was waived when petitioners failed to raise it in a timely manner. Even if the constitutional challenge had been preserved, it is without merit. Contrary to petitioners' assertions, this case is readily distinguishable from *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998). The *Eastern* decision involved a different health plan, a completely separate provision of the Coal Act, and did not address "related person" liability. Unlike Eastern Enterprises, the signatory operators to which Pea Ridge and Oxide are related signed NBCWAs as recently as 1988. *Eastern* simply does not apply to the circumstances in this case.

II. BACKGROUND

A. History and Structure Of The Coal Act

Petitioners' liability arises under Sections 9711 and 9712 of the Coal Act. The Coal Act fundamentally changed the system under which certain retired coal miners and their dependents receive health benefits. The several opinions in *Eastern, supra,* addressed at some length the historical

background of the statute.[1] We summarize only those aspects of that background that are relevant here.

1. *History Of The Coal Act*

Since 1946, retiree health benefits for covered miners have been provided through a series of multiemployer health plans established and maintained pursuant to successive collective bargaining agreements known as National Bituminous Coal Wage Agreements ("NBCWAs"). From 1950 through 1974, health benefits (and pension benefits as well) were provided through a single multiemployer plan known as the UMWA 1950 Welfare and Retirement Fund ("1950 W&R Fund"). Following the enactment of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.*, the collective bargaining parties, the United Mine Workers of America ("UMWA") and the Bituminous Coal Operators' Association, Inc. ("BCOA"), entered into the 1974 NBCWA.

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[1]Numerous court of appeals decisions, both before and after *Eastern*, have addressed the same history. *See, e.g., Unity Real Estate Co. v. Hudson*, 178 F.3d 649 (3d Cir.), *cert. denied*, ___ U.S. ___, 120 S. Ct. 396 (1999); *Anker Energy Corp. v. Consolidation Coal Co.*, 177 F.3d 161 (3d Cir.), *cert. denied*, ___ U.S. ___, 120 S. Ct. 496 (1999); *Association of Bituminous Contractors, Inc. v. Apfel*, 156 F.3d 1246 (D.C. Cir. 1998); *Holland v. Keenan Trucking Co.*, 102 F.3d 786 (4th Cir. 1996); *Davon Inc. v. Shalala*, 75 F.3d 1114 (7th Cir.), *cert. denied*, 519 U.S. 808 (1996); *In re Blue Diamond Coal, Co. (Blue Diamond Coal Co. v. Shalala)*, 79 F.3d 516 (6th Cir. 1996), *cert. denied*, 519 U.S. 1055 (1997); *In re Chateaugay Corp. (LTV Steel Co. v. Shalala)*, 53 F.3d 478 (2d Cir.), *cert. denied*, 516 U.S. 913 (1995).

In this agreement, the UMWA and BCOA divided the 1950 W&R Fund into four separate plans. Two of the new plans, the UMWA 1950 Benefit Plan and the UMWA 1974 Benefit Plan, provided health benefits, and the other two provided pension benefits. *See Eastern,* 524 U.S. at 509 (plurality). *See also* Pet. App. 5a.

Not long after the creation of the UMWA 1950 and 1974 Benefit Plans, severe demographic and economic changes began to have an adverse effect on the multiemployer plans. As health care costs increased, more and more coal operators exited the coal industry and "dumped" their retirees into the UMWA Plans, where their benefits would be funded by the remaining signatory operators. As the number of coal operators contributing to the UMWA Plans decreased, fewer and fewer operators were left to carry the burden of rapidly rising health care costs, not only for their own retirees but also for thousands of "orphan" retirees with whom none of the remaining contributing operators had ever had any employment relationship. *Eastern*, 524 U.S. at 511 (plurality). As a result, "[b]y the late 1980s, the UMWA Plans were facing insolvency," and, as in the past, "the issue of continued, stable funding for retiree benefits contributed to protracted labor unrest." *Keenan,* 102 F.3d at 738. *See also* 136 Cong. Rec. S12312 (daily ed. Oct. 2, 1989) (statement of Sen. Rockefeller) (labor disputes and unrest threatened the economies of several coal producing states).

In 1989, the UMWA engaged in a well-known ten-month labor dispute against the Pittston Coal Company, which was only resolved after Secretary of Labor Dole intervened and appointed a mediator. One of the terms incorporated in the settlement provided for the creation of the Secretary of Labor's Advisory Commission on United Mine Workers of America

Retiree Health Benefits (the "Coal Commission"), an industry-wide commission charged with the task of analyzing the retiree health care crisis and recommending solutions. Pet. App. 6a. *See also Eastern,* 524 U.S. at 511 (plurality).

The November 5, 1990 Coal Commission report explained that the collective bargaining process – limited as it was to companies still mining coal – was inadequate to provide a long-term solution and that legislation would be necessary to solve the crisis. The Coal Commission concluded that retired miners had legitimate expectations of receiving lifetime health benefits and that a statutory funding obligation should be imposed on current and former signatories to NBCWAs. The Commission also concluded that the legislation should include mechanisms to prevent future dumping of retiree health obligations. *See* Pet. App. 6a; *Davon, supra,* 75 F.3d at 1118. After two years of deliberations, Congress enacted the Coal Act.

2. Structure of the Coal Act

In the Coal Act, Congress provided that eligible beneficiaries under the statute would receive health coverage either from one of two new trust funds to be created in accordance with the statute or from their former employers' individual employer plans. The Coal Act mandates the continuation of individual employer plans ("IEPs") maintained by NBCWA signatories that were contractually obligated to maintain such plans as of February 1, 1993. 26 U.S.C. § 9711. These plans provided health coverage for retirees who left covered service on or after January 1, 1976, and their survivors and dependents.

This case concerns petitioners' obligation to provide benefits to their retirees directly through an IEP pursuant to

Section 9711, as well as their obligations to pay premiums to the 1992 Plan, one of two newly created funds.[2] *See* 26 U.S.C. § 9712(d)(2)(A), (B). The 1992 Plan was established "to provide health benefits to retirees who were eligible but not yet covered under previous UMWA benefit plans, and who were not receiving benefits directly from their former employers." *Keenan*, 102 F.3d at 739. *See also* Pet. App. 7a. For each beneficiary of the 1992 Plan, the last NBCWA signatory coal operator to employ the retiree in question is responsible for paying a monthly per beneficiary premium sufficient to provide health benefits for that beneficiary. 26 U.S.C. § 9712(d)(1)(B), (d)(3).[3]

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[2]The Coal Act also created the UMWA Combined Benefit Fund ("Combined Fund"). Under the statute, the UMWA 1950 and 1974 Benefit Plans were merged into the Combined Fund as of February 1, 1993. 26 U.S.C. § 9702. The Combined Fund provides health and death benefits to coal industry retirees and their dependents who, as of July 20, 1992, were eligible to receive, and were receiving, benefits from the UMWA 1950 or 1974 Benefit Plans. *Id.* at § 9703(a), (b)(1), (e), (f).

[3]In addition, each 1988 Last Signatory Operator is required to pay annual prefunding premiums to the 1992 Benefit Plan. This premium is incurred on an annual basis, and is payable for each of the operator's beneficiaries who is either receiving benefits from the 1992 Plan, or potentially eligible to receive such benefits in the future because he or she is receiving benefits from the employer's individual employer plan pursuant to 26 U.S.C. § 9711. 26 U.S.C. § 9712(d)(1)(A). Finally, 1988 Last Signatory Operators are required to provide security in favor of the 1992 Plan to ensure funding of benefits in the event

In addition, the "related persons" of any such Last Signatory Operator are jointly and severally liable for that operator's financial obligations to the 1992 Plan. 26 U.S.C. § 9712(d)(4).[4] Related persons are also jointly and severally liable for the obligation to provide health care directly to the beneficiaries through an IEP. 26 U.S.C. § 9711(c). This liability attaches jointly and severally to a Last Signatory Operator's related persons even if those entities themselves did not employ any 1992 Plan beneficiaries and even if those entities did not engage in any coal mining.

B. Petitioners' Obligations Under The Coal Act

The Trustees of the 1992 Plan brought this action in the United States District Court for the Southern District of West Virginia to compel petitioners to provide health coverage to eleven retired coal miners and their eligible dependents in accordance with the Coal Act. Pet. App. 10a. Petitioners Birchfield Mining, Inc. ("Birchfield"), Davidson Mining, Inc. ("Davidson"), and M.A.E.-West, Inc. ("M.A.E.-West") were signatory to the 1988 NBCWA. All eleven of the miners

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the operator defaults on its obligations. 26 U.S.C. § 9712(d)(2)(C).

[4]The term "related person" is defined in 26 U.S.C. § 9701(c)(2). It includes: 1) a member of a controlled group of corporations that includes the signatory operator as of July 20, 1992; 2) a trade or business under common control with the signatory company as of July 20, 1992; or 3) a person that has a partnership interest or joint venture with a signatory company in a business within the coal industry as of July 20, 1992. 26 U.S.C. § 9701(c)(2).

became totally and permanently disabled as the result of mine accidents in the course of their employment for Birchfield, Davidson, or M.A.E.-West. All had worked for petitioners prior to February 1, 1993. None of the retirees was receiving health benefits from either the former collectively bargained UMWA plans or from their former employer's IEP on February 1, 1993. It is undisputed that, absent passage of the Coal Act, all eleven of the miners would have been eligible for health care from the former UMWA 1950 and 1974 Benefit Plans.

As signatories to the 1988 NBCWA, the collective bargaining agreement in effect when the retirees in question last worked, Birchfield, Davidson, and M.A.E.-West are "1988 Last Signatory Operators" as defined in the Coal Act. 26 U.S.C. §§ 9701(c)(4), 9712(d)(6). There is no dispute that the other nine petitioners are "related persons" to Birchfield, Davidson, and M.A.E.-West as defined in the Coal Act. Petitioners nevertheless refused to provide retiree health care to these retirees under their own IEP, as required by Section 9711 of the Coal Act, 26 U.S.C. § 9711.[5] Because petitioners were not providing the required health coverage, the 1992 Plan enrolled the eleven retirees and their eligible dependents. The 1992 Plan then filed this action, seeking (i) the payment of premiums owed to the 1992 Plan pursuant to Section 9712 of the Coal Act, 26 U.S.C. § 9712 as a result of the Plan's enrolling the beneficiaries and providing their health care; and (ii) an order requiring petitioners to provide future health benefits through an IEP to the eleven disabled retirees and their dependents.

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[5]After the court of appeals issued its decision in this case, petitioners enrolled the eleven retirees and their eligible dependents in their IEP, pending the outcome of the instant petition.

Petitioners made the same arguments to the district court and the court of appeals that they now make here. They asserted that Sections 9711(b)(1) and 9712(b)(2) of the Coal Act preclude coverage for these disabled pensioners because their eligibility for their pensions is derived from their total and permanent disability from work-related accidents, rather than from their attainment of a certain age and a certain number of years of service. The Trustees of the 1992 Plan responded that, properly read, the statute simply means that any applicable age and service requirements must have been satisfied by February 1, 1993, and that in the case of a disability pensioner, this means only that he must have worked in signatory employment before that date. The court of appeals ruled that, although "the statutory language is reasonably susceptible to either of these two interpretations . . . [t]he historical background leading to the enactment of the Coal Act makes clear that Congress intended to provide coal industry retirees with . . . health benefits in the event of their retirement, whether that retirement resulted from a disability or was based solely on their satisfaction of age and service requirements . . . ." Pet. App. 13a. Accordingly, the court upheld the district court's summary judgment in favor of the 1992 Plan.

ARGUMENT

The court of appeals' decision is correct, and further review is not warranted. All three circuits that have addressed the issue presented here have reached the same result, and that result is plainly consistent with Congress' intent in enacting the Coal Act. It is inconceivable that the Congress that sought to protect and perpetuate retiree health benefits in the coal industry would have chosen to eliminate from the statute's coverage the very retirees likely to have a special need for the statute's protection – persons who have been totally and permanently

disabled in mine accidents. Contrary to petitioners' assertion, the statutory interpretation adopted by the court of appeals does not render any statutory language redundant or superfluous. It merely recognizes the unremarkable fact that the same statutory language need not apply in the same way to differently situated pensioners. By looking to the purpose and context of the statute in which the ambiguous statutory language appears, the court of appeals proceeded in a manner faithful to this Court's rulings. *See, e.g., Robinson v. Shell Oil Co.*, 519 U.S. 337, 345-47 (1997) (interpreting ambiguous statutory language by reference to broad context and primary purpose of remedial statute).

Petitioners' effort to raise in this Court a constitutional challenge to the application of the Coal Act to Pea Ridge and Oxide (as related persons to the pensioners' former employers) is similarly misguided. As both courts below ruled, petitioners waived any such argument by failing to present it in a timely fashion in the district court. Petitioners do not even bother to suggest any reason why this waiver ruling does not preclude review here. In any event, petitioners' challenge to the "control group" liability imposed by the Coal Act is unsupported by any authority and is without merit.

I. THE COURTS BELOW CORRECTLY INTERPRETED SECTIONS 9711 AND 9712 OF THE COAL ACT

Petitioners' basic contention is that, because Sections 9711 and 9712 of the Coal Act contain a date by which "age and service" requirements must be met, only retirees who are receiving pensions that are based on attainment of a certain age and a minimum number of years of service are eligible for benefits under those sections. Therefore, petitioners argue, disability pensioners, who are receiving pensions based on the

fact that they became totally and permanently disabled in mine accidents, rather than attainment of specific age and service requirements, are simply not covered by the Coal Act.[6] Petitioners contend that to read the statute otherwise renders the references to "age and service" redundant and superfluous. Petitioners misread the statute.

Contrary to petitioners' characterization, the phrases containing the words "age and service" do not, by their express terms, require that retired miners be receiving a certain kind of pension in order to meet the Coal Act's eligibility requirements. Indeed, the statutory provisions do not contain the term

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[6]Below, petitioners also argued that the eleven retirees at issue are not eligible for benefits under the Coal Act because they did not "retire" by September 30, 1994, as required by the statute. Under petitioners' theory, in order to be considered "retired," a miner must have actually filed a pension application. Because Sections 9711 and 9712 preclude coverage for individuals "who retired from the coal industry after September 30, 1994 . . . ," 26 U.S.C. §§ 9711(b)(1), 9712(b)(2), petitioners argued to the courts below that the eleven beneficiaries did not "retire" by September 30, 1994 because they had not yet filed their pension applications by that date. The court of appeals upheld the district court's rejection of this argument, holding that "[t]he plain meaning of the word 'retired,' . . . does not encompass only those individuals who receive, or have applied for, pension benefits." Pet. App. 14a (*citing The Random House College Dictionary* 1127 (rev. ed. 1980). Although petitioners mention the September 30, 1994 deadline in their Questions Presented and their Statement of the Case (Pet. 2), the petition contains no argument as to why the court of appeals' decision on this issue should be reviewed.

"pension" at all. Instead, each of the provisions simply sets the date by which certain requirements, *i.e.*, applicable age and service requirements, must be met.

Section 9711(b)(1) provides:

> The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, *but has met the age and service requirements for eligibility to receive benefits under such plan as of such date,* shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries . . . .

26 U.S.C. § 9711(b)(1) (emphasis added). Rather than excluding coverage for disability pensioners, Section 9711 simply requires that the miner must have met age and service requirements, if any, for health benefits under the collectively bargained system by February 1, 1993.

Likewise, Section 9712(b)(2) describes eligible beneficiaries under the 1992 Plan as persons who:

> (A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, *based upon age and service earned as of February 1, 1993;* or
>
> (B) with respect to whom coverage is required to be provided under section 9711, but who does not receive

> such coverage from the applicable last signatory or any related person.

26 U.S.C. § 9712(b)(2). The language in Section 9712 of the Coal Act should be read in a similar fashion, to require that retirees meet applicable requirements that are "based on age and service" by February 1, 1993.

Both the pre-Coal Act individual employer plans and the UMWA 1950 and 1974 Benefit Plans provided benefits to retirees with all kinds of pensions, regardless of the age or service required for such pensions. Before the passage of the Coal Act, all pensioners under the 1974 Pension Plan (other than miners receiving deferred vested pensions with fewer than 20 years of service) received health coverage from their last signatory employer or the 1974 Benefit Plan if their last signatory employer was "no longer in business" within the meaning of the 1974 Benefit Plan document. The 1974 Pension Plan, in turn, provided a number of different kinds of pensions, with differing eligibility requirements. Among these were disability pensions. Eligibility for retiree health benefits therefore did not depend on attainment of a minimum age or length of service; a miner who met the requirements for a disability pension was entitled to a such a pension and, consequently, health care from either his employer or the UMWA Benefit Plans, regardless of his age or the length of his service. Accordingly, as the court of appeals held, the better reading of the phrases referring to "age and service" is as requirements that the miner have attained whatever age or service was necessary for his particular pension. Pet. App. 13a.

Petitioners argue that, under the interpretation upheld by the court of appeals, Sections 9711(b)(1) and 9712(b)(2) do not require the inclusion of the words "age and service" at all. Pet.

at 8-9. To the contrary, however, those provisions would have different meanings if the words age and service were stricken. Under the language as Congress wrote it, only age and service requirements must be met by February 1, 1993. Other requirements, such as the requirement that a disability pensioner be totally and permanently disabled in a mine accident in order to receive a disability pension, do not have to be met by that date. If the language highlighted by petitioners were removed, however, *all* eligibility requirements would have to have been met by February 1, 1993. Thus, the interpretation adopted by the Fourth Circuit, and by the Third Circuit in *Pennsylvania Mines* and the D.C. Circuit in *Penn Allegh,* does not render any language superfluous or redundant.

The distinction drawn by petitioners between "age and service" pensioners and disability pensioners would effectively rewrite the eligibility provisions of the pre-Coal Act IEPs and the 1974 Benefit Plan. As is evident from the plain language of the Coal Act, Congress simply did not intend, and the Coal Act did not accomplish, such a drastic change. Indeed, the purpose of the statute was to *preserve* these benefits. As Congress explained in the Coal Act's statement of policy, the Act was designed to remedy the problems in providing health care benefits "to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry . . . ." 106 Stat. 3037; *see* 26 U.S.C. § 9701 (historical note). Petitioners' contention that Congress, without any expression whatsoever of an intent to do so, deliberately altered longstanding eligibility requirements so radically as to deny benefits to disabled pensioners is untenable. Had Congress intended such a drastic change, it surely would have said so directly. As the court of appeals held, the language concerning "age and service" is ambiguous, and the history and purpose of the Coal Act demonstrate that Congress did not intend to

exclude disability pensioners from coverage. Pet. App. 13a. *See also Penn Allegh,* 183 F.3d at 864; *Pennsylvania Mines,* 1999 U.S. App. LEXIS 30356, *17.

II. PETITIONERS' CONSTITUTIONAL ARGUMENT DOES NOT MERIT REVIEW

A. As The Courts Below Held, Petitioners' Constitutional Argument Was Waived

In pursuing their claim that the Coal Act is unconstitutional as applied to petitioners Pea Ridge and Oxide, petitioners fail to mention that the courts below held that the constitutional challenge was not timely raised, and was therefore waived. Petitioners do not suggest any reason why the waiver ruling was incorrect. Because the court of appeals did not address the merits of petitioners' constitutional arguments, this Court should decline to review them. *See Adickes v. Kress Co.*, 398 U.S. 144, 147 n.2 (1970) ("Where issues are neither raised before, nor considered by the Court of Appeals, this Court will not ordinarily consider them.").

B. The Fourth Circuit's Decision Does Not Conflict With Eastern

Even if petitioners had properly preserved their constitutional challenge, it would not warrant review here. *Eastern*, on which petitioners rely, does not apply to the circumstances of this case. *Eastern* involved a coal operator's statutory obligations to the Combined Fund, not the 1992 Plan. The *Eastern* decision was limited to application of Section 9706 of the Coal Act, a provision not at issue here. *Eastern* addressed the constitutionality of only one portion of the Coal Act's three-tier system for the assignment of Combined Fund

beneficiaries to former employers and held that one subsection of the statute, Section 9706(a)(3), was unconstitutional as applied to Eastern Enterprises. By contrast, the 1992 Plan is an entirely new benefit plan created by the Coal Act, with an entirely different funding mechanism. *See* 26 U.S.C. § 9712(d)(3). Finally, *Eastern* did not address the provisions of the Coal Act pertaining to related persons. Indeed, no court has ever questioned the validity of those provisions.

Petitioners nevertheless argue that there are similarities between this case and *Eastern* that demonstrate that the Coal Act is unconstitutional as applied to Pea Ridge and Oxide. Essentially, petitioners contend that assessment of liability against Pea Ridge and Oxide is unconstitutional because those companies did not actually sign collective bargaining agreements with the UMWA or employ coal miners under such agreements. As related persons, the liability of Pea Ridge and Oxide is, by definition, based upon their inclusion in a controlled group of corporations that also includes signatories to the 1988 NBCWA. That is the point of controlled group liability; by making all members of a corporate family liable, regardless of whether each such company itself signed a collective bargaining agreement, Congress sought to ensure that Coal Act liability would not be avoided through corporate manipulations.[7] What petitioners are really seeking here is a

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[7]Controlled group liability has long been included in other statutory schemes. As shown by the number of cases upholding previous legislation containing similar provisions, Congress acted reasonably in extending liability to the related persons of signatory operators. *See Pension Benefit Guaranty Corp. v. Ouimet Corp.*, 711 F.2d 1085 (1st Cir.), *cert. denied*, 464 U.S. 916 (1983); *Teamsters Pension Trust Fund of*

determination that this Court, in *Eastern*, eliminated related person liability under the Coal Act. Even a cursory review of the decision demonstrates that the Court did no such thing.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Philadelphia v. Domenic Cristinzio, 994 F. Supp. 617 (E.D. Pa. 1998); *Central States, Southeast and Southwest Areas Pension Fund v. Skyland Leasing Co.*, 691 F. Supp. 6 (W.D. Mich. 1987), *aff'd* 892 F.2d 1043 (6th Cir. 1990); *Branch v. United States*, 69 F.3d 1571 (Fed. Cir. 1995).